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VIRGINIA MILITARY, CONTINENTAL, OR STATE LAND WARRANTS AND THE OHIO UNIVERSITY LANDS.

HEARINGS

BEFORE THE

COMMITTEE ON THE PUBLIC LANDS,

JANUARY 8, 1907.

STATEMENT OF MR. NELSON W. EVANS, OF PORTSMOUTH, OHIO, AND REPORT FROM THE SECRETARY OF THE INTERIOR ON S. 5881 CONTAINING THE SUBJECT-MATTER UNDER CONSIDERATION.

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COMMITTEE ON THE PUBLIC LANDS,
HOUSE OF REPRESENTATIVES,
January 8, 1907.

The committee met at 10.45 o'clock a. m.

Present: Messrs. Lacey (chairman), Mondell, Smith, of California, Gronna, Burnett, and Volstead.

Present also, Nelson W. Evans, esq., of Portsmouth, Ohio, and Mr. Homer Guerry, of Washington, D. C.

The committee thereupon proceeded to the consideration of the bill (H. R. 19517)—

To amend and construe an act entitled "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred, and for other purposes," in so far as the same relates to Virginia military, continental, or State land warrants.

STATEMENT OF NELSON W. EVANS, ESQ.

The CHAIRMAN. The bill, gentlemen, is 19517. The committee will come to order informally until we get a quorum, and as the time is short, I think perhaps Captain Evans had better commence. And permit me, Captain, before you begin, to suggest the propriety of your first making a concise statement of just what the history of the matter is, and of the remedy in the past and the proposed remedy at present, etc.

Mr. EVANS. I will make it just as concise as I can. I have studied how to boil it down, and I think I can.

Mr. Chairman and gentlemen of the committee, you will remember that in 1783, at the time of the treaty of peace with England, and before the Federal Constitution was adopted, Connecticut, Massachusetts, Virginia, and some of the other States had quite extensive claims to land lying west of the mountains; and there was a great agitation at that time that all of the thirteen States should turn their lands over to the United States. That was the general public sentiment.

In the fall of 1783 Virginia passed a resolution to cede all her lands northwest of the Ohio River to the State of Ohio, and the Continental Congress, or the Congress of the Confederation, accepted the proposition. She had two lines; it was uncertain how much land she could rightfully claim northwest of the Ohio River. She had one line that ran northwest, but Connecticut and Massachusetts claimed that her line should run east and west. That, however, is neither here nor there. Virginia made the proposition; the

Continental Congress accepted it; and on the 1st day of March, 1784, all the lands of Virginia that lay northwest of the Ohio River were ceded to the United States. There was a reservation in this, that all the lands between the Little Miami and the Scioto, north of the Ohio, and bounded by a line drawn by their sources, should be reserved for the satisfaction of the bounty land warrants of the Virginia soldiers who had served for three years on the Continental line in the Revolutionary war. That embraced 4,504,800 acres of land. In addition to that, Virginia ceded about twice as much more unconditionally; at least, with the most modest claim that could be made on behalf of Virginia, that would be the amount of her cession. But, owing to the lines running differently, there was some question about it.

Under the Federal administration there was no action taken by the Federal Congress until the 10th day of August, 1790; and then they passed a bill in which they ratified this action of the Continental Congress and of the State of Virginia, which was consummated on the 1st day of March, 1784, and opened the district to location, and provided that these warrants might be located in this district, and allowed them a short time—from two to three years—to locate them. And, singular to say, nearly all the warrants that were located north of the Ohio, in this district, are officers' warrants, and the surveys run in the name of the officers of Virginia in the Revolutionary war; and so we who live in that district ought to be a patriotic people, for we hear their names every day, the names of the officers and soldiers of Virginia in the Revolutionary war.

Congress extended these acts for locating surveys on these warrants about 19 times; and then they closed the district to relate to the 1st day of January, 1852. There were no more locations that could be made after that date. Then, on the 12th day of April, 1852, the legislature of Virginia passed a resolution, and you will find it on the last page of the paper I gave you, which has four pages—the neostyle print. They requested Congress to pass a scrip law and satisfy all their unsatisfied Virginia military warrants, saying that if Congress would do so they would release all claims to this district. That was the 12th day of April, 1852. On the 31st day of August, 1852, Congress passed the scrip law, which is on those slips which I gave you, printed in type. Then, on the 6th day of December, 1852, Virginia passed a second resolution, accepting this scrip law of August 31, 1852, as a full, complete, and perfect satisfaction of all Virginia's claims on account of the Revolutionary war, and directing the governor of Virginia to give a release in the name of the State. You will find that at the bottom of the fourth page of the paper I first handed you.

Now, then, that was a compact between Virginia and the United States; and what I claim is that the Department of the Interior, after upholding that compact from 1852 to the 15th day of January, 1906, then repudiated it. What I claim is that that compact required the Government of the United States to satisfy every one of these warrants that were unsatisfied at that date; and all these warrants were.

The CHAIRMAN. Right in that connection, I have here the report made to the Senate committee, and they suggest that if the bill is to pass at all it ought to be reduced to twelve months.

Mr. EVANS. No, I think not; because——

The CHAIRMAN. I say, that is what they suggest; and that there should also be a provision that everything not filed within twelve months shall be forever barred. Your bill does not contemplate barring anybody hereafter?

Mr. EVANS. No, sir; only it gives them three years.

The CHAIRMAN. No; it gives them three years, but it doesn't provide that they shall be barred if they do not file within three years.

Mr. EVANS. I don't think Congress is competent to do that. My view of it is that this is a compact between Virginia and the United States. It is a trust. The United States received these lands and agreed to satisfy these warrants, and they received double the number of acres of land that will be required to satisfy warrants.

The CHAIRMAN. Then it was not your intention that there should be any bar? It was your intention to remove the bar for the future?

Mr. EVANS. No, sir; it was the intention to do this: That the present bill is simply to require these people who have not filed their warrants—the ones that have them on file the bill does not affect, but the ones that haven't filed them have three years, but after that date nobody can bring in a bill without future action by Congress.

Mr. MONDELL. Judge, how does it happen that there are parties who did not bring in their warrants under the law passed several years ago limiting the time within which they were to be presented?

Mr. EVANS. Now, that is the very thing I want to tell you about. The university, when it began to take up these lands, sent men to hunt up the titles. They have been finding defective titles, and they have actually, since the 3d day of March, 1890, when this bar became effective, deprived the owners of 40,000 acres of their lands, and the very people whose names are signed to that statement are part of the 40,000. There is about 10,000 acres there.

Mr. GUERRY. That is not what he refers to. He refers to why the warrants didn't come in.

Mr. EVANS. Very well. The warrants were here in all cases but 4,000 acres. The warrants were on file, and have been all the time. But we claim it is a misconstruction on the part of the Department of the Interior.

The CHAIRMAN. You mean to say now that the State of Ohio, through the university there, is robbing its citizens of all this land—putting them out of their own land—on technical grounds?

Mr. EVANS. They are compelling them to take titles of them. They compel them to come in and accept their titles; they compel them to come here to Washington. I know a man that spent a thousand dollars to get his title perfected. They require them to come here and show that they have a right to a university deed, and then they require them to give up their claims for taxes, and those sometimes are four times the value of the land.

The CHAIRMAN. Give up their claim for what?

Mr. EVANS. The people that have been occupying these lands from 1787 to the present time have been paying taxes on them.

The CHAIRMAN. Yes.

Mr. EVANS. In 1851 every particle of land in Ohio went on the tax deed, no matter whether it was a valid survey or not. The very shortest time that taxes have been paid on this land is since 1851 and the

longest time is 1797. Some of them have paid taxes from 1797 and some from 1851.

The CHAIRMAN. What do you mean by giving up their claims for taxes?

Mr. EVANS. I mean that they have a claim against the State of Ohio for taxes, and these claims amount to four times the price of their land in many cases. They require them to give up these claims and then they will give them the deed. In other words, if they will give them four to one they can have the land.

Mr. SMITH. Did they make a claim against the State for taxes?

Mr. EVANS. This claim is unquestionable. The title to this property, according to the decision of the Supreme Court in Fussell *v.* Gregg (113 U. S., 550), was in the United States until the 18th day of February, 1871, and since that date it has been in the State of Ohio.

The CHAIRMAN. If these farmers have their title quieted why should they, after using this land and enjoying the rents and profits of it for fifty years, now set up, by reason of their own defect of title, a claim against the State?

Mr. EVANS. They own these warrants. That has been tested time and again. They own these warrants. They haven't been satisfied. They have to take a different title to their land, and they have been to great expense in some cases to correct their title. I know one man who has 5,000 acres of this land and he spent $3,500 to correct his title.

Mr. GRONNA. Is most of this land occupied by farmers?

Mr. EVANS. Yes, sir; some of them very poor men. As I say there in my argument, out of the whole 75 that I know of there are but 2 bankers.

Mr. SMITH. Is that tax question an important one in this connection?

Mr. EVANS. It is just this way. These people supposed they owned the land. The United States left them under that impression.

Mr. SMITH. Well, they have had the use and benefit of it.

Mr. EVANS. They have had the use and benefit of it; yes, sir. They have paid taxes on it. Now it turns out that they do not own it. The university comes in and says, "Here, this is our land; show us now what your title is, and go to the expense of demonstrating your title," and, as I say, one man has gone to the expense of a thousand dollars to prove his title.

The CHAIRMAN. I would like to boil this down. These people can get their title from the State of Ohio without any further trouble provided they will release any claim that they may have by reason of having paid taxes on the land that they thought they owned heretofore.

Mr. EVANS. They have to release all claims for taxes.

The CHAIRMAN. Now, why isn't that a fair deal?

Mr. SMITH. I don't see why they have any equitable right to the return of taxes.

Mr. EVANS. They want this warrant satisfied, because they own it. The warrant holds the land. It goes from the owner, who conveys it to the next owner, and so on, and when the warrant fails, then the party is entitled to have his warrant commuted.

Mr. MONDELL. Do I understand that these parties want to receive title to their lands under this new form of title, and then receive pay for their warrant in addition thereto?

Mr. EVANS. They own the warrant; they have lost the land. The warrant doesn't hold it. The university comes in, and they are just as bad off as they were the first four years. There were four years when the university compelled them to pay for their land outright. Then they changed and allowed them, by yielding up their tax claims and going to the expense of coming here to Washington and making an investigation and demonstrating their titles—which was just about as expensive as paying for their land—to give them a deed if they would do that. That was the last proposition. And the State of Ohio has paid back the money right along for the land.

The CHAIRMAN. Was that by an act of the legislature of Ohio?

Mr. EVANS. The last act of the legislature on the subject was in 1889. That was the act by which they were allowed, by giving up all their claims and demonstrating their titles, to get a deed. They had to pay a nominal amount for it. But very often the cost of that is more than the value of the land.

Mr. SMITH. Well, the outlay would be nominal now?

Mr. EVANS. Sir?

Mr. SMITH. The outlay of the individual would be nominal now?

Mr. EVANS. Before that they could get their taxes back.

Mr. SMITH. Well, I don't think they have any reason—that doesn't interest me at all. They haven't any more right to get their taxes back than I have.

Mr. EVANS. These people own their warrants. They bought and paid for them.

Mr. SMITH. I don't care anything about that. If they had the use of the land and it wasn't worth the taxes they had better move to a State where it is.

Mr. EVANS. Some of it is valuable and some is not.

Mr. GRONNA. How much of this land is in dispute now?

Mr. EVANS. The university has taken up 170,000 acres, under the decision of the Supreme Court in Fussell *v.* Gregg. Now, we were not satisfied with that decision and I brought a case up to the Supreme Court two years later and argued it orally here in court. It was a case involving these titles and the court thereupon affirmed its previous decision. We were in hopes there might be some modification of it.

Mr. SMITH. I don't quite get the hang of it. Suppose a man has held a tract of that land for many years. Now, he can go to the State university and get his title for $1.25 an acre, can't he?

Mr. EVANS. No, sir. There is a nominal fee he is required to pay and then he has to give up all his claim for taxes, and then he has to go to work and be at the expense of demonstrating to them that he has a title that the university has a right to remedy.

Mr. SMITH. Well, that is right; show an abstract of the title?

Mr. EVANS. And they recover the land from him. They have done it repeatedly.

Mr. SMITH. But they are not disposed to if he will pay a nominal price?

Mr. EVANS. But he has to release these claims that he has.

Mr. SMITH. But he isn't out any money?

Mr. EVANS. Oh, yes; they are out. As I told you, I know one man that has spent a thousand dollars to correct his title. He had to come here and get transcripts and send men here to hunt up things in the Department, and all that kind of thing.

Mr. SMITH. To get his proofs?

Mr. EVANS. Yes, sir; he had to demonstrate that; so here is the point about it. The university gets credit for so much an acre, and the State pays them taxes on that forever. Now, there are a lot of people watching the university, and they won't let them have anything unless they can demonstrate their rights, and they put that burden on the people.

Mr. SMITH. How is it proposed that we shall relieve them of this burden of hunting up their title?

Mr. EVANS. You don't relieve them of that. The United States promised, in its compact with Virginia, to satisfy these warrants. They have satisfied all of them except, perhaps, 170,000 acres. They have satisfied 5,000,000 and upward; 4,334,000 was satisfied in land, and 1,041,916 satisfied in scrip. Now, these people who have been left out on this proposition have just exactly the same rights and the same privileges as the ones that have been satisfied.

I will give you an illustration: We have a gentleman in our town by the name of Mr. Le Bold. He is vice-president of the First National Bank there, and Mr. Bannon knows him very well; Mr. Bannon is a director in the same bank. He made application, while they were construing this law that way, for 752 acres that he had lost title to, and they gave him his scrip. Now he has 592½ acres more; and because he has got them and because the Secretary of the Interior has reversed himself, he is not allowed to have that. He has been refused.

The CHAIRMAN. What is this scrip valuable for?

Mr. EVANS. He simply disposes of it.

The CHAIRMAN. I mean, what can be done with it? If you had a thousand acres of that scrip, what could you do with it?

Mr. EVANS. We could sell it.

Mr. GUERRY. It is locatable in Arkansas, Louisiana, and Alabama. The price is $1.25 an acre, offered at public sale.

Mr. MONDELL. The scrip is confined to offered land?

Mr. EVANS. It is confined to offered land.

The CHAIRMAN. The land warrants have gone up now to $5 an acre, locatable only on offered land. They used to be worth only 80 cents an acre. They have found a large area of offered lands that can be located on.

Mr. EVANS. Now, take these people. Let us confine ourselves to this 40,000 acres that have been dispossessed since this bar took effect. Now, they have exactly the same claims and the same rights with the people who have been satisfied.

The CHAIRMAN. We don't know much about that. Pardon us if we ask you a good many questions that may seem unnecessary to you.

Mr. EVANS. Certainly.

The CHAIRMAN. Now, you say this man has been dispossessed. Did he have possession of a farm there?

Mr. EVANS. He had; in this particular case it was timber and stone land.

The CHAIRMAN. Very well; and he was selling the timber off of it, and pasturage, and all that sort of thing?

Mr. EVANS. Of course he had the same ownership as anybody has of land; no question about that.

The CHAIRMAN. Now he has been dispossessed what has become of the land?

Mr. EVANS. In this case, by complying with the requirements of the university, he has gotten a new title.

The CHAIRMAN. He simply proved that he ought to have a title?

Mr. EVANS. By incurring this expense they have allowed him a deed, but he has been at all this expense, which would be worth $1.25 an acre.

The CHAIRMAN. They made him release any claim he might have?

Mr. EVANS. Yes, sir; he had to release all claims—claims that the State of Ohio had theretofore paid back to these people. The first four years they paid these claims back.

The CHAIRMAN. Isn't that a mistake they made to begin with, encouraging those people, letting them have their land back and releasing them of taxes?

Mr. EVANS. Well, it varies, you know. The expense in some cases is larger than in others; but the point is this, that the owners of this 40,000 acres are entitled to this scrip just precisely the same as the people who have been satisfied either in land or scrip.

Mr. MONDELL. Now, Judge, excuse me for my effort to get enlightened on this subject.

Mr. EVANS. Yes, sir.

Mr. MONDELL. You say that approximately 5,000,000 acres of this scrip was satisfied?

Mr. EVANS. No; I say that the warrants were satisfied.

Mr. MONDELL. The warrants; yes.

Mr. EVANS. And 4,334,800 were satisfied in land.

Mr. MONDELL. Well, approximately 4,000,000 or 5,000,000 in warrants were satisfied. How were they satisfied?

Mr. EVANS. In land, when they were first located.

Mr. MONDELL. But how is it arranged so that the question of title can be raised in those cases? How is it that there are certain claims that are fixed and valid and recognized, and there are certain other claims, that you are arguing for, the validity of which is in question? What is the difference between the two classes?

Mr. EVANS. The Supreme Court decided that very case, that where the survey had not reached the land office by the 1st day of January, 1852, the military title was lost entirely.

Mr. MONDELL. Then these cases in regard to which you are now arguing are cases where the parties did not make their survey——

Mr. EVANS. Oh, they made it, but didn't return it.

Mr. MONDELL. Wait till I get through, please. And present their warrants——

Mr. EVANS. Their survey.

Mr. MONDELL. And present their warrants and survey here at the Interior Department?

Mr. EVANS. Yes, sir; that is right.

Mr. MONDELL. At the time provided by law as the limit within which they could be presented?

Mr. EVANS. Yes, sir; that was the cause of it.

Mr. MONDELL. Now, all their trouble has resulted from their own laches in not complying with that provision of law?

Mr. EVANS. Somebody's laches; I don't know. It may not be the present owner, you know. You can't put it on the present owner.

Mr. MONDELL. Now, in spite of the fact that the time limit within which those surveys and warrants were to be filed, the warrants were filed here?

Mr. EVANS. Yes; filed too late.

Mr. MONDELL. They were filed here?

Mr. EVANS. Yes; some of them.

Mr. MONDELL. The Interior Department took no action, either to approve or disapprove, in those cases; is that true?

Mr. EVANS. No, sir; they went and issued patents on a great many of them and afterwards declared them void.

Mr. GUERRY. And the Supreme Court canceled them.

Mr. EVANS. Yes, sir.

Mr. MONDELL. Now, the Supreme Court held that even though the Interior Department had issued a patent in those cases, they were void?

Mr. EVANS. Yes, sir; that is the very thing they did.

Mr. MONDELL. So that in some of these cases where these parties are now required to prove title they actually have a patent?

Mr. EVANS. Yes, sir; they have patents, lots of them; just any number of them.

Mr. MONDELL. Now, how did the State university get into the game?

Mr. EVANS. This way: Congress passed a law ceding this land to the State of Ohio; the unsurveyed and unsold lands—unappropriated they meant.

The CHAIRMAN. What was the date of that?

Mr. EVANS. The 18th of February, 1871. On the 26th of March, 1872, the State of Ohio turned this all over to their university, which is merely an agency of the State, and thereupon the question arose what went under this grant. There got to be a dispute all over the State about it, and it got so warm down in our part of the State that the university couldn't recover on a plain note of hand, as the saying is, there was such a prejudice. Finally the Supreme Court, in Fussell *v.* Gregg—Justice Matthews decided that on circuit, first at Toledo—decided that where the survey was not returned in time every foot of land went under this grant.

Mr. SMITH. To the university?

Mr. EVANS. Yes, sir; that is just what he decided. But what he was after was this: He was anxious to get rid of a man by the name of Jerry Hall down there who had gone and gotten patents on old surveys that hadn't been filed in time. He would go and sue the proprietors, and he was bound to recover; and he got some of the finest lands in the State that way. Matthews was going to put an end to that, and in order to do that he turned in and decided that when these surveys were not filed in time the land was released and that the land went under this grant. But while he saved a great many people from Mr. Hall, he turned over this 170,000 acres without any title at all.

Mr. SMITH. What legislation has followed that?

Mr. EVANS. The condition is that after the 21st of January, 1885, the Ohio State University went into the land-office business, and they have been taking this land away. They have taken 40,000 acres from the people since the 3d day of March, 1900.

Mr. MONDELL. Well, Judge, if I may make that observation, it occurs to me that the decent thing for the great and glorious State of Ohio to have done, after that decision was rendered, would have been to quitclaim all its rights, title, and interest to these lands that these people had been holding and occupying for such a length of time.

Mr. EVANS. That doesn't reach the point.

Mr. MONDELL. It would have reached the point if the State of Ohio had done its duty.

Mr. EVANS. The United States doesn't want the State of Ohio to pay its debts, does it? The point is, these warrants belong to these people who hold the land. The Supreme Court of the United States says that they do not have the land, and consequently they own a warrant instead. Now, here is the United States under the scrip law of August 31, 1852, which was passed at the request of Virginia—Virginia was the trustee for these people—it says we shall have this. Now, why don't we get it?

Mr. MONDELL. Now, out our way it is not usual for a State to try to drive hard bargains with its citizens to get their property.

Mr. EVANS. Well, I don't know; but there have been some terrible hardships.

The CHAIRMAN. Do your people there regard the scrip as of more value than the land itself? Would they rather have the scrip than the land?

Mr. EVANS. Why, I don't know how that is. Some of the land is very poor, you know, and some of it is very good. It varies. If it is valley land it is rich, and if it is hill land it isn't worth more than $1.25 an acre. That is just the way of it, exactly.

The CHAIRMAN. They would rather have the scrip than have the land?

Mr. EVANS. In that case they would, of course.

The CHAIRMAN. But they can get the land, all of them, by releasing their claim for taxes?

Mr. EVANS. Yes, sir; but they have got to release all their claims which have heretofore been paid. There were four years when the State of Ohio paid all these claims. They paid the taxes.

Mr. SMITH. Does any one have to pay back any taxes which he has received from the State of Ohio?

Mr. EVANS. Pay back?

Mr. SMITH. Yes.

Mr. EVANS. Before this law passed in 1889, they got the taxes back when they paid the university about $2 an acre for the land.

Mr. SMITH. Now, then, what is the present status? I understand from what you said a moment ago that the legal title to this land is in the university?

Mr. EVANS. Unquestionably; no doubt about it.

Mr. SMITH. All right. Now, then, a man has lived on it for many years, and thinks he owns it, or ought to own it?

Mr. EVANS. Yes.

Mr. SMITH. On what terms can he go to the university now and get a title that will be undisputed? For how much?

Mr. EVANS. Well, it varies. You see there is the difficulty about it. If he has valuable land and has paid taxes on it at a net valuation—we have the ad valorem system out there—his claim is ever so much more than that of the man who has poor land.

Mr. SMITH. You are talking about rebates of taxes; I am not interested in that. I want to say, once and for all, that I wish you would not mention that part of the question, for it is too utterly absurd, in my opinion, to be considered by this committee.

Mr. EVANS. What is that?

Mr. SMITH. That anybody should lay a claim against the State of Ohio, or any other State, for the return of taxes, where he has had the use and benefit of the land.

Mr. EVANS. The statutes of Ohio provide for that.

Mr. SMITH. Now, how much would he have to pay the university to get a title?

Mr. EVANS. It would vary according to the difficulty of his title and according to the value of his land.

Mr. SMITH. How much in cash?

Mr. EVANS. He don't have to pay the university anything.

Mr. SMITH. Oh, well.

Mr. EVANS. He has to give them a release, and he has to be at the expense of proving up his title.

Mr. SMITH. He has to get an abstract of the title?

Mr. EVANS. In some cases it is very expensive. Then in other cases he has to release his attach claims.

The CHAIRMAN. Right in connection with Mr. Smith's inquiry. So far as the land is concerned, they can get title by releasing the claim for taxes and furnishing the necessary proof; but some of them would prefer to abandon that to the university and claim their taxes back, which they would get, and take their scrip and go out West somewhere, and the proposition now is to give them their option to go West and locate this land somewhere?

Mr. EVANS. Yes, sir; for the poor lands.

Mr. SMITH. We don't want him to come into California with any such scrip as that.

Mr. GRONNA. About these taxes. I understand that a lot of this land has been owned and really not occupied?

Mr. EVANS. The title was all the time either in the United States or the State of Ohio, and not taxable.

Mr. SMITH. It was used by the people?

Mr. EVANS. To a greater or less extent—some more and some less.

The CHAIRMAN. Was it all covered by timber?

Mr. EVANS. This hill land has been covered with timber.

The CHAIRMAN. Hasn't that been cut off and realized on?

Mr. EVANS. A great deal of it.

Mr. SMITH. How much did the taxes amount to per year?

Mr. EVANS. Oh, that varies according to the valuation of the land.

Mr. SMITH. About how much for the farming land?

Mr. EVANS. For the farm land it amounts in some cases to as much as 3 per cent.

Mr. SMITH. And the crop was worth 20 per cent, I suppose?

Mr. EVANS. Well, we have 3 per cent taxes there. I should say the average of taxation in Ohio to-day is $2.48.

Mr. SMITH. I should say that if those people would say to the State of California, "We will pay you rent for the use of this land if you will pay us back our taxes," maybe the State would make a good bargain.

Mr. EVANS. Well, I don't know; but we have always had a law in Ohio by which taxes were refunded where it turned out that the party didn't have the title.

Mr. MONDELL. Even though he had the use of the land?

Mr. EVANS. Oh, yes, sir; always. The taxes are refunded. That is a very old statute.

Mr. MONDELL. It is better in Ohio not to own land than to own it in some cases?

Mr. EVANS. That depends on the character of the land altogether, but in those four years they paid back the taxes. Now, then, they require them to give their tax claims, but the point we make here is this: We have precisely the same claims that have been satisfied in scrip up to 1,041,916 acres. There can't be over 170,000 acres of it left. And we would have no objection if you gentlemen would just put at the bottom of that bill that this will be good up to 125,000. I think there is 30,000 or 25,000 of that 170,000 that was located on satisfied warrants and State line warrants, and those people can't have any relief; and if you just put at the bottom of this bill that the amount allowed under this bill shall not exceed 125,000 acres, you will relieve everybody. That is just the position exactly. That clause never ought to have been there, in my judgment.

Mr. MONDELL. Which clause is that?

Mr. EVANS. Barring them if they don't present it within a certain time. That shouldn't have been there.

Mr. SMITH. Hasn't that always been the practice?

Mr. EVANS. There never has been such a law as to these claims passed before.

Mr. SMITH. Hasn't there generally been a time limit?

Mr. EVANS. Never on scrip.

Mr. MONDELL. Yes; we passed a law here two years ago limiting scrip locations.

Mr. GRONNA. It was a very unjust law, too, Mr. Mondell.

Mr. MONDELL. No, it wasn't.

Mr. GRONNA. The big fellows got in and got the land, and the little fellows didn't get it. I know of a whole lot of claims of that kind.

Mr. EVANS. There is no way in the world now to give these people relief, except in this manner, with that decision of the Supreme Court. Congress, when they passed the law of 1880, undertook to relieve these people.

Mr. VOLSTEAD. What was the object of turning those 170,000 acres over to the university, or to the State of Ohio?

Mr. EVANS. I really don't know.

Mr. VOLSTEAD. Wasn't it for the purpose of satisfying themselves?

Mr. EVANS. I am sure that if Congress had it to do now, they never would pass such a law as that of 1871. It has been nothing but a curse and a trouble to the people.

Mr. VOLSTEAD. Wasn't it done for the purpose of turning that land over to the State, so that the State could protect its citizens?

Mr. EVANS. Well, it was thought best at that time to turn it over to the State, and nobody objected; but the great trouble was that they never understood the subject.

Mr. VOLSTEAD. There must have been some object. Did the State have any claim to that land?

Mr. EVANS. No, sir; none whatever.

Mr. VOLSTEAD. Then they must have taken it for the purpose of satisfying these warrants.

Mr. EVANS. The State hadn't the slightest claim to it. And then Virginia had released its claim, you know, in 1852.

Mr. VOLSTEAD. Well, if the State didn't have any claim to it, and they simply turned it over to the State University, there isn't any injustice that the State is required to settle with these parties.

Mr. EVANS. No, sir; the State had nothing to do with it. It is the debt of the United States.

Mr. VOLSTEAD. Yes; but if it was turned over to the State of Ohio so that it could protect its citizens, why shouldn't the State of Ohio do it?

Mr. EVANS. I don't know; but it has been a curse to those people. They have been compelled to go to great expense. I suppose in this very case the people have spent a thousand dollars to get their title straightened.

Mr. SMITH. Let me ask you a question.

Mr. EVANS. Yes, sir.

Mr. SMITH. You complain of the hardship imposed upon them by their having to produce before the university the evidence of their title. Now, if we pass this bill, which I understand is to give them scrip for their apparent title——

Mr. EVANS. Well, for their warrant.

Mr. SMITH. For their warrant, wouldn't they have to produce before the Department of the Interior exactly the same evidence of their interest in the land which they now have to produce to the university?

Mr. EVANS. No; they would simply have to connect the title to the warrant.

Mr. SMITH. Well, you have got to show that you are the individual who is entitled to the benefit of the land.

Mr. EVANS. No; before the State they have to show that the survey was not filed at the proper time; they have to show that they have been in possession a certain time; they have to produce witnesses to that effect.

Mr. SMITH. That is your State law?

Mr. EVANS. Yes, sir. They have to go back to the 14th of April, 1868—that is, two years or three years before this cession—no, the 14th of March, 1868. They have to show that they have been in possession, they have to produce witnesses, and have to show a transcript of everything from the Land Office.

Mr. SMITH. Now, then, under this bill what would they have to show to the Land Department here?

Mr. EVANS. They would simply have to show that this class of land that they had came under this grant, and then they would have to connect their title to the warrant and then they would get scrip. Now, there is not a warrant in existence outside of those on file, except 4,000 acres. There was a story flying around here, when that

clause was put on there, that there was a million acres of these warrants outstanding that had never been satisfied. Now, in point of fact, that was a mistake. There was a million acres of scrip issued, but there was nothing of that kind. Every one of these warrants that will go to make these 470,000 acres—if there are that many; that is the limit; there can't be more than that—every one of them, except those 4,000 acres, is on file.

Mr. SMITH. Then the burden rests on the requirements of the Ohio statute?

Mr. EVANS. Yes, sir; the Ohio statute requires them to prove their title clear back to 1868.

Mr. SMITH. Now, if the legislature of Ohio would relieve them of the burden of that proof and then, upon such proof as you contemplate shall be made before the Interior Department, the university should issue to you a quitclaim deed, you would have the whole thing settled? The State of Ohio could simplify the proof that is required.

Mr. EVANS. No; the State of Ohio has passed this law.

Mr. SMITH. Well, it could repeal it and pass another one.

Mr. EVANS. Well, I don't know; but they put the people to an immense lot of trouble and expense.

The CHAIRMAN. If we follow out your plan the State of Ohio will be permitted to retain those lands that it ought to turn over to its citizens and the United States would reward them for their action by turning over to the citizens a lot of scrip in lieu of the land; so Ohio and her citizens would be ahead the land and the scrip both; isn't that about the state of the case?

Mr. EVANS. No; Ohio wouldn't get the scrip.

Mr. SMITH. Ohio would get the land and the citizens the scrip?

Mr. EVANS. Take this case: That was a thousand acres of a 4,000-acre warrant. The other 3,000 was properly located and patented, and this survey was made November 13, 1787; and these people have been holding under it ever since. Their survey didn't happen to be filed here; it was filed in Richmond, and somebody went and got the governor of Virginia to issue a patent on it; never sent it to Washington. Then there was a law of 1826 that forbade anybody to take up the warrant and go and get a new location until he had lost the title; and they couldn't do anything but sit still, and the university comes along in 1903, when this bar had gone for three years, and compels them to go to work and look up their title, and says: "You get out or pay all this expense."

Mr. SMITH. Well, that burden is all occasioned by the law of the State of Ohio?

Mr. EVANS. No, sir; it is caused by the law of Congress and the construction the Supreme Court put on it.

Mr. SMITH. I don't think so.

Mr. EVANS. Congress held this land to satisfy these warrants. Instead of satisfying the warrants they gave it away to the State.

Mr. SMITH. They said: "If you will produce a warrant on surveyed land by 1854, you may have it." Now, they didn't do it.

Mr. EVANS. Some of them didn't do it; but this land has changed hands a number of times, you know.

Mr. SMITH. That is true, but they all took it with notice of what had been done before.

Mr. EVANS. There is no doubt of that, but at the same time Congress tried twice, since this grant of 1871, to relieve these people, and in 1880 they passed a law and said that the law did not affect anybody that was claiming under a survey and a warrant, as all these people were; and they were not satisfied with that, so they turned around in 1882 and passed another law that anybody who had been on there twenty years, claiming under an entry, should hold his land. But the Supreme Court held that Congress could not legislate after they had given the land away.

Mr. SMITH. Well, that is right.

Mr. EVANS. And so those two acts were void. Now, Congress tried twice to relieve these people, and it was ineffectual. This is the only relief that can be given.

Mr. MONDELL. But the State of Ohio could have been equally generous to her own citizens, and she refused to do it.

Mr. SMITH. And refuses now.

Mr. EVANS. Well, she has put a great burden on them, no doubt.

Mr. SMITH. All right; let her unload it.

Mr. EVANS. Well, but this warrant is a debt of the United States.

Mr. SMITH. No; I don't think so.

Mr. EVANS. Well, I am clear about that.

Mr. MONDELL. How in the world can a grant—a gratuity—to a State of some public land become a debt?

Mr. SMITH. With the condition attached that they shall locate it a certain way, and they don't do it?

Mr. EVANS. Virginia gave this land to the United States on condition that the United States would satisfy these warrants, and she gave double the quantity that was required. The United States undertook to do it. Now, it turns out that they were not all satisfied in 1852, and thereupon Virginia comes forward and releases her claim to the United States, and the United States binds itself to satisfy these warrants.

Mr. SMITH. Was there a prescribed method by which they might be satisfied, and that method was not followed?

Mr. EVANS. The United States has given away these 170,000 acres that she might have satisfied—given them to the State.

Mr. GRONNA. In other words, the State of Ohio got something that it was not entitled to, and shut out the people that had the warrants?

Mr. EVANS. Yes, sir; just exactly. The State of Ohio never should have had this. To have done right, these people should have held these same lands under the warrant, and they didn't do it.

Mr. VOLSTEAD. Have you that act of 1871 here?

Mr. EVANS. I haven't it with me, but it is simply this, that it grants to the State of Ohio all the unsurveyed and unsold lands in the Virginia military district of the State. Ohio only passed this law of 1889 after all this conflict and trouble had been caused. They only passed it then, and there is the most wonderful prejudice in the district against the university that you ever could imagine.

Mr. VOLSTEAD. Doesn't that prejudice arise out of the fact that they got that land that they want?

Mr. EVANS. Yes, sir.

Mr. VOLSTEAD. That they are holding to satisfy these claims?

Mr. EVANS. And they got $170,000 of an endowment fund from this land, that the State is paying interest on every year to the university, and they are getting just as much more, and just think of it, they got 40,000 acres since March 3, 1890, and I know of some 1,500 acres they got recently.

Now, then, as we say, we do not want you to lose sight of this proposition that this warrant is a debt of the United States. It is a debt which the United States engaged with Virginia to satisfy and has not satisfied. It was provided in this law of 1852 and in the resolutions of Virginia that these warrants should be satisfied. We are the owners of these warrants. We say to the United States, "You haven't paid this debt," and we say "We are the owners of the claim; pay it to us."

Mr. SMITH. It comes around in another way to this point: That this debt, as you call it, can be satisfied; that you, who claim that the Government owes you this land——

Mr. EVANS. Yes, sir; the Government owes the satisfaction of those warrants; that is it.

Mr. SMITH. And you can get the land on which that warrant was laid?

Mr. EVANS. Did not get it; no, sir; it went to the State of Ohio.

Mr. SMITH. Well, you can get it from the university. You can get the land from the State university, which would satisfy your warrant, by making certain onerous proofs to the university?

Mr. EVANS. Yes, sir; and release certain valid claims that have heretofore been paid.

Mr. SMITH. Taxes, you mean?

Mr. EVANS. That the State paid for four years.

Mr. SMITH. I am not interested in that phase of it at all. You can get your land, which will satisfy your warrant, by making certain onerous proofs to the university?

Mr. EVANS. Yes, sir.

Mr. SMITH. The burden of that proof is imposed by the law of Ohio?

Mr. EVANS. That is all imposed by the law of Ohio.

Mr. SMITH. All right. Go to Ohio and say, "Remove this burden of proof that I may get my title by a simple procedure," such as you contemplate shall be accomplished if we pass this bill. Now, it looks to me as if Ohio, if she wanted to avoid all this turmoil and bad feeling, which I can readily understand exists, would modify her law as to the proof which must be required in order to obtain title from the university, and then the farmer would get his land, everybody would be happy, and substantial justice would be done all along the line.

Mr. MONDELL. Now, Judge, right there. This grant to the State of Ohio that you refer to was a grant of the unentered, unclaimed land in a certain territory?

Mr. EVANS. Yes, sir.

Mr. MONDELL. It was an indeterminate——

Mr. EVANS. "Unsurveyed and unsold," or unappropriated; that was the language.

Mr. MONDELL. It was not a grant in the payment of any obligation to the State of Ohio?

Mr. EVANS. Not at all.

Mr. MONDELL. It was a pure gratuity of the United States to the State of Ohio?

Mr. EVANS. Yes, sir; that is exactly what it was; a pure gratuity.

Mr. MONDELL. Now, the State of Ohio proposes, under the close construction of a decision of the court, to take advantage of a gratuity of the United States to her, to enable her university to place a great burden upon her own citizens; that is the situation?

Mr. EVANS. That is the effect of it, of course.

Mr. MONDELL. Now, why does not the great and glorious State of Ohio, which received something as a gratuity, get off the backs of her citizens, with the heavy load of proof that she has laid upon them in these cases?

Mr. EVANS. I suppose the legislature of Ohio could answer that question better than I could.

Mr. MONDELL. Is it not a fact that the majority of these people could, without very great cost, prove up on their claims, but that a good deal of the land is poor, farmed-out, rocky timber land, cut over, and no longer valuable?

Mr. EVANS. Some of it is, undoubtedly.

Mr. MONDELL. And the owners could reap a considerable profit and secure very considerable value by surrendering title to their land, compelling the State of Ohio to pay them, nobody knows how much, in back taxes, and then receive a valuable land warrant, which in itself is probably worth more than the land?

Mr. EVANS. No, he can't do that. I will answer that question by another one. I say this much: These people lost their title to the lands they held under the warrant. They were obliged to hold it, under the law of 1826, until the district was closed. They could not apply for any relief. The law of the United States barred them from applying for relief. Now, then, the United States turned around and gave this land away to the State, and the State takes it and turns it over to its university. These people have no land, but they have the warrant. This is an obligation that the United States assumed. Does the United States want the State of Ohio to pay its debts?

Mr. MONDELL. You just admitted a moment ago, Judge, that this grant to the State of Ohio was a pure gratuity.

Mr. EVANS. I can't see it any other way. Ohio had no claim on these lands. I don't know of any claim it had.

Mr. MONDELL. Then you can't properly say that the State of Ohio, by waiving her claim to certain lands, the title of which is in question, is paying the debt of the United States. As a matter of fact, the United States did grant certain lands, the quantity and location of which no one knew, within a certain district, to the State of Ohio, as a gratuity and a gift?

Mr. EVANS. Yes.

Mr. MONDELL. The State of Ohio is using that grant now to prevent her citizens from securing title to lands located under certain warrants; and she could relieve her citizens very easily?

Mr. EVANS. Well, I don't see that the State of Ohio has anything to do with it. The United States owns this land, and they promised Virginia that they would use it in satisfying these warrants. They did not use it; they have given it away to a third party that had no

claim on it. Now this third party comes in and says, "Why, your warrant don't hold this; it is ours, and we take it;" and they do take it. What are we going to do about it?

Mr. VOLSTEAD. That land, as I understand, was reserved in the first place for the purpose of satisfying these warrants?

Mr. EVANS. Yes, sir.

Mr. VOLSTEAD. When the State of Ohio took that land, it knew that it was in trust?

Mr. EVANS. No, sir; it was relieved from the trust in 1852. Virginia released that trust in 1852; and why did she release it? Because at that time the cost was such that every one of these warrants could be satisfied in scrip, and it was not a question of the land. The land was free from 1852 to 1903, entirely free.

Mr. SMITH. At the time the Government turned the land over to Ohio, and Ohio passed it on to the university, they had notice that individuals had asserted a claim to this land by filing their scrip application or warrant against unsurveyed land?

Mr. EVANS. Every bit of it had been claimed, but the claims didn't hold.

Mr. SMITH. They had notice that there was an equitable claim out against the land?

Mr. EVANS. Yes, sir; all of it had been claimed in one way or another.

Mr. SMITH. They took it with the condition of this equitable claim?

Mr. EVANS. The United States canceled their trust in 1852 and held this land free of the trust in favor of Virginia. But how did they do it? They did it by assuming to satisfy these warrants, and these people are the owners of these warrants. Now what are you going to do?

Mr. MONDELL. You say you have a law in Ohio by which the State repays parties who have paid taxes on land?

Mr. EVANS. Land they didn't own?

Mr. MONDELL. Land which it develops they hadn't a clear title to?

Mr. EVANS. Yes, sir; we have had that for many years.

Mr. MONDELL. Now, can a person claiming a tract of land and proved not to be the owner of it collect back all the taxes that have ever been paid on the same?

Mr. EVANS. No, sir; they can't go back over five years.

Mr. MONDELL. He can collect taxes for five years back?

Mr. EVANS. Yes; he can collect taxes for five years. You can't go back, of course, because then you would run into other people.

Mr. MONDELL. That doesn't amount to a very large amount.

Mr. EVANS. Yes, sir; in many of the cases it amounts to the price of the land.

Mr. MONDELL. Then the land is not worth much?

Mr. EVANS. Well, some of it is not, as I told you.

Mr. SMITH. Does the tax amount to one-fifth of its value?

Mr. EVANS. In some cases it does; not every case.

Mr. SMITH. That would be a 20 per cent tax.

Mr. EVANS. Some is taxed for a large quantity and some for a small.

Mr. SMITH. That would be a tax of 20 per cent. The valuation probably is not over 40 per cent?

Mr. EVANS. In some cases these are taxed very high. There are

some cases in the State where the taxes are so high that the parties let them go and sell, and then they go in under another statute, buy them in, and get them reappraised. That is a fact.

Mr. SMITH. But it is not the usual thing——

Mr. EVANS. We have a pernicious system of taxing in Ohio.

Mr. SMITH. It is not the usual thing that the taxes shall amount to 20 per cent of the value of the land, is it?

Mr. EVANS. I should say in a few cases that the taxes are sometimes that; not many.

Mr. SMITH. There is not enough of it to affect this grant?

Mr. EVANS. Of the poor lands; they are appraised too high.

The CHAIRMAN. Would you expect this land to go to the university and scrip taken in lieu of it if we pass this bill?

Mr. EVANS. Yes, sir.

The CHAIRMAN. So that the university would be ahead 125,000 acres of land, and your people would be rewarded by scrip in lieu of it?

Mr. EVANS. What I say is this: I say, in my judgment, there can't be over 125,000 acres of the claims. Now, then, all the others have been paid.

The CHAIRMAN. Now, let me ask you a question right in this connection. Would there be any claims where men had not located or supposed they had located land in Ohio?

Mr. EVANS. Where they had not what?

The CHAIRMAN. Where they had not located, or at least believed they had located, land in Ohio?

Mr. EVANS. No, sir; not a bit. Every one of those would go to men who had lost their title to the university.

The CHAIRMAN. The whole thing, then, is narrowed down to so many acres of land or an equal amount of scrip in lieu thereof?

Mr. EVANS. Yes, sir.

The CHAIRMAN. Except 4,000 that hadn't been filed?

Mr. EVANS. Yes, sir; ther is 4,000 that was not filed.

The CHAIRMAN. That would be in addition?

Mr. EVANS. Yes.

The CHAIRMAN. They are the only ones that are left out now?

Mr. EVANS. Yes, sir; they are the only warrants that are not on file.

Mr. MONDELL. In regard to that 4,000; there has been no survey made?

Mr. EVANS. Oh, yes, sir. There is 3,100 of that that belonged to the father of his country, and he had the surveys made in 1789.

The CHAIRMAN. Who owns it now?

Mr. EVANS. If you will allow me to explain it, I will do so. These surveys were made in 1787. George Washington owned two warrants, one for 3,000 acres and one for 100 acres. He located in 1787 and the surveys were returned to Richmond, and there was a patent issued in 1792; and when he made his will, on the 6th of July, 1799, he estimated this land at $15,256 and said it was good land. Well, the survey never came up to Washington, and in 1806 some other man went in there and surveyed it and sent the surveys here, and in 1808 they got patents and the title went out to others. Now, there is the George Washington warrant, 3,100 acres, one of

them is 3,000 and one 100, and there is a warrant in the name of Edward Williams for a thousand acres, and those are the only ones that are not on file.

Mr. SMITH. Who owns those warrants now?

Mr. EVANS. The Washington estate owns the 3,100 acres; I don't know.

Mr. SMITH. Well, who is the distributee?

Mr. EVANS. You can answer that question as well as I can.

Mr. SMITH. You think they might never be presented?

Mr. EVANS. They can't be presented under the circumstances. But I merely use this as an illustration. Where they have been located and where they have held the land until recently the ownership passes with the land, and they have living representatives. They are the men that are injured.

Mr. SMITH. Why couldn't that warrant be presented now?

Mr. EVANS. Which one?

Mr. SMITH. The George Washington.

Mr. EVANS. You would have to go down to Fairfax court-house and appoint an administrator de bonis non, and I don't know whether the court would do that.

Mr. MONDELL. Would you have to prove that Washington is dead? [Laughter.]

Mr. EVANS. But these other people, except this 4,100 acres, had this land all the time, you know; and I say to you, gentlemen, that you may study this just as long as you please, and you can come to but one conclusion, that this is a debt of the United States, and it is a debt which they are in honor, in every respect, bound to pay, just as they paid the balance of it; and I don't see how you can get out of it.

The CHAIRMAN. Is there anything further, Judge, that you want to present?

Mr. EVANS. No, sir; nothing further. If I think of anything further, I will put it on paper.

Whereupon (at 11.55 a. m.) the committee adjourned.

[Extract from The Congressional Globe, January 13, 1871, p. 475.]

VIRGINIA MILITARY DISTRICT IN OHIO.

Mr. WARNER. The Committee on Public Lands, to whom was referred the bill (H. R. 175) to cede to the State of Ohio the unsold lands in the Virginia military district in said State, have directed me to report it back without amendment and to recommend its passage.

Mr. THURMAN. I ask the unanimous consent of the Senate that that bill be put on its passage now. I think there is no objection to it whatsoever. I am personally acquainted with the facts in the case. These are wild lands, the remnant of what is called the Virginia military district in Ohio, lands which Virginia had retained for the satisfaction of warrants granted to her soldiers in the Revolution. The laws authorizing the entry and survey of those lands for the

satisfaction of those bounties have all ceased for many years, and the lands must lie there unsurveyed, of no use to anybody in the world, unappropriated, vacant lands, unless some such measure as this shall pass. I believe it passed unanimously in the House of Representatives, and it has been referred to a committee of the Senate and is now reported back. I hope, if there be no objection, that it will be put on its passage at once.

The VICE-PRESIDENT. The bill will be reported for information, after which the chair will ask for objections, if there be any.

The Chief Clerk read the bill, which proposes to cede to the State of Ohio the lands remaining unsurveyed and unsold in the Virginia military district in that State, upon the condition that any person who at the time of the passage of the act is a bona fide settler on any portion of the land may hold not exceeding 160 acres so by him occupied by his preempting the same, in such manner as the legislature of the State of Ohio may direct.

Mr. EDMUNDS. Before that bill is taken up for action, I should like to inquire what is the particular haste about it, which makes it necessary to do the extraordinary thing of considering it now?

Mr. THURMAN. As I am so very familiar with that subject, having lived in that district a great part of my life, I can answer the question of the Senator from Vermont. There is no haste about this at all. Virginia, by her deed of cession of the northwestern territory, reserved the lands between the Scioto and Little Miami rivers, in the State of Ohio, for the satisfaction of the bounty in land promised to her soldiers in the Revolution on the continental establishment—that is, in the Regular Army. Those lands were taken up under a system peculiar to that land district, what were called entries for survey. They were not surveyed into sections at all; but a principal surveyor was appointed, who appointed deputies; and a person could enter the lands in any shape he pleased and in any quantity he pleased, and then the lands were surveyed under the orders of the principal surveyor of the district, and, upon the proper papers being returned to the Department here—first the Department of State, afterward the Department of War, and finally the Interior Department—if everything was found regular, patents were issued. The consequence of this system, not a very good one it is true, is that all the good lands have long since been taken up, and there is nothing left but a few sterile hills.

Mr. EDMUNDS. How many acres?

Mr. THURMAN. The estimate is that there is not at the outside over 100,000 acres of land.

Mr. WARNER. The report of the Commissioner of the General Land Office puts it at not to exceed 40,000 acres. Other parties are of opinion it will not reach over 10,000 or 15,000 acres.

Mr. THURMAN. There are not 10,000 acres of good land left. Now, I wish to say one word further, and it is this: When Congress passed the last scrip law to give scrip to the Virginia claimants they required Virginia to relinquish all claim to that land, which she did. That was perhaps twelve or fifteen years ago, and ever since then that land has lain there unoccupied, the title being in the United States; but there is no provision of law whatsoever by which patents can be granted. You can not enter the land in the United States

Land Office, for it is not in the public-land system. It lies there in that vacant way, of no benefit to anybody whatsoever.

Mr. EDMUNDS. I have been so much a convert to the opinions of my friend from Ohio about land grants that I should like to look into this bill a little before we grant 100,000 acres of land, and I think it had better go over until to-morrow.

Mr. WARNER. If the Senator will allow me to make an explanation perhaps it may remove his objection in part at least. Virginia was in the habit of giving land grants to parties who were soldiers, and they located them themselves without survey. She would give to a soldier a grant for 1,000 acres of land. He would go and establish his own metes and boundaries. The result of that was that everybody took the best lands he could find, and the consequence is that strips and shreds of land have been left lying about on the mountains and in other places where they are worthless. That has given rise to endless litigation in regard to these strips of land between contesting settlers, and it is the opinion of all the Members of the House of Representatives from Ohio, and of both the Senators, that the only practical way to settle this matter is to refer it to the legislature of Ohio. The lands in themselves are of no volue. There are not probably to exceed 12,000 or 15,000 acres, which lie in strips, sometimes beginning at a point and running a mile for the width of a rod or two. In order that the legislature of Ohio at home, familiar with all the facts, may devise some system by which the right to these strips may be settled between these parties better than it can be here, this bill is proposed. The lands are of no benefit to the Government, and never can be.

Mr. EDMUNDS. And in order to accomplish this settlement the lands are to be given to the State of Ohio?

Mr. WARNER. Yes.

Mr. EDMUNDS. I should be willing to settle the title to all the lands in the country on the same terms; let them all be given to me.

Mr. SHERMAN. There are no surveys here.

Mr. EDMUNDS. The bill may be perfectly right, but I think it reasonable that we should be allowed to look into it a little.

Mr. POMEROY. Before this matter passes from the Senate I wish to say that under the law granting lands to the States for agricultural colleges the State of Ohio is obliged to take these lands. That law provides that if there are public lands in a State its agricultural college scrip shall be located on them.

Mr. SHERMAN. But the Senator must understand that this is not land subject to private entry.

Mr. POMEROY. But it is public land within the State of Ohio, though not surveyed. There is the point. If these lands had been surveyed and were treated as public lands the State of Ohio would have been obliged to take them to satisfy the land scrip which was issued for agricultural colleges within the State; but not being surveyed, the State has sold her agricultural scrip on the market, and it has come out and been located in my State and other States, when Ohio should have had these lands surveyed and taken them herself, good or bad.

Mr. SCOTT. Before this subject passes from the notice of the Senate, I desire to call the attention of the chairman of the Com-

mittee on Public Lands to a bill which was introduced a few days ago for the purpose of enabling the heirs of a Revolutionary soldier to locate a warrant upon other public lands, on the ground that the lands in the State of Ohio assigned for that purpose were all exhausted. That was the information communicated from the Land Department at that time. Now, if there be public lands in the State of Ohio which have been set apart for the purpose of satisfying the claims of Revolutionary soldiers, I desire that he shall look into it, with special reference to that bill, before these lands pass to the State of Ohio.

The VICE-PRESIDENT. The bill will be placed on the Calendar, objection being made to its present consideration.

[Extract from The Congressional Globe, July 6, 1870, p. 5247.]

VIRGINIA MILITARY LANDS IN OHIO.

Mr. JULIAN. I yield to my colleague on the committee from Ohio (Mr. Winans).

Mr. WINANS, from the Committee on the Public Lands, reported back, with the recommendation that it do pass, the bill (H. R. 175) to cede to the State of Ohio the unsold lands in the Virginia military district in said State.

The question was upon ordering the bill to be engrossed and read a third time.

The bill was read. It proposes to cede to the State of Ohio the lands remaining unsurveyed and unsold in the Virginia military district in said State, on the condition that any person who at the time of the passage of this act is a bona fide settler on any portion of said land may hold not exceeding 160 acres by him occupied by his preempting the same in such manner as the legislature of the State of Ohio may direct.

Mr. HOLMAN. I call for the reading of the engrossed bill.

The SPEAKER. We have not yet reached that stage.

Mr. WARD. I would like to inquire how much of this land there is remaining?

Mr. WINANS. I understand that there are about 40,000 acres of land in the Virginia military district in the State of Ohio, and it consists for the most part of fragments and slips upon which no warrants have been laid, upon hills and the tops of mountains, and it is a fruitful source of strife and litigation among squatters. A bill precisely similar to this passed the House in the Fortieth Congress, but for want of time failed to get through the Senate. I yield now to my colleague (Mr. Wilson).

Mr. WILSON, of Ohio. This bill, I know, is proper and correct in all respects. I happen to live in this military district. Gentlemen will remember that when the State of Virginia ceded the Northwest Territory to the United States she reserved all the lands lying between the Scioto and the Little Miami rivers for the purpose of paying her soldiers' warrants. The lands had never been surveyed by the General Government and the parties entitled to land warrants went into the district and made their surveys to every point of the compass, leaving out the mountains, the cliffs, and the streams that would be no advantage whatever. Hence, many years since the land

was all taken up and the warrants were not satisfied. Well, the State of Virginia ceded the remaining lands in that district to the General Government, the General Government issuing scrip to satisfy the warrants that had been issued to the citizens of Virginia for Revolutionary services. The land office at Chillicothe was closed in 1854, and since that time no entries can be made and no titles obtained.

Instead of there being 40,000 acres, I venture to say that there is not one-third of that amount of land, all told, and it lies in three counties, two of which are represented by myself and one by my colleague, Mr. Van Trump. The remaining land is not worth 25 cents an acre, all told. I know what I am talking about. I am familiar with almost every foot of it. It is all upon mountains and rocky cliffs, which were not considered worth entry, and never were entered. It is a source of litigation and contention among settlers, and I hope this bill will be passed and that the legislature will do justice to all concerned. It is in the very poorest part of the State, and is embraced in what is known as the Brush Creek and Scioto Mountain region. It is absolutely worthless for agricultural purposes, but, being a bone of contention, I hope the House will pass this bill in justice to all concerned.

The bill was ordered to be engrossed and read a third time.

Mr. HOLMAN. I call for the reading of the engrossed bill.

Mr. WINANS. I hope the gentleman will not insist on having the engrossed copy of the bill read.

Mr. HOLMAN. In order to give an opportunity for the bill to be engrossed, I move that it be laid on the table, and on that motion I call for the yeas and nays.

Mr. WINANS. I move that the rules be suspended and the bill passed.

Mr. HOLMAN. I will withdraw my motion to lay the bill on the table.

The question was then taken upon the motion to suspend the rules and pass the bill, and (two-thirds voting in the affirmative) it was agreed to.

[Extract from the Congressional Globe, February 11, 1871, p. 1139.]

Mr. POMEROY. I move to take up House bill No. 175. I will say to the Senate that I do not intend to press any bills to-day that will lead to any extended debate.

Mr. THURMAN. I do not think there will be any discussion on this bill.

Mr. POMEROY. Any of the subsidy bills, as they are called, we do not expect to pass, as it is late in the session.

The VICE-PRESIDENT. The Senator from Kansas reserves the right if a bill gives rise to debate to have it returned to the Calendar.

Mr. POMEROY. But there are several bills relating to land offices and land districts, small bills, that I want to pass.

The motion was agreed to; and the Senate, as in Committee of the Whole, proceeded to consider the bill (H. R. No. 175) to cede to the State of Ohio the unsold lands in the Virginia military district in said State.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

BRIEF OF N. W. EVANS.

In re House bill No. 19517 to amend and construe an act entitled "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1900, and for other purposes," in so far as it relates to the Virginia military district of Ohio.

This bill becomes necessary because of a wrong and improper construction the Department of the Interior placed on the act of March 3, 1899.

That law required the owners or holders of all outstanding military bounty land warrants, issued by the State of Virginia on account of services in the war of the Revolution, to be presented and surrendered to the Secretary of the Interior within twelve months from the approval of the act, or they were, on failure to do so, to be forever barred. This act was passed under the belief of facts misrepresented to Congress. It was told as an inducement to the passage of the act that there were 1,000,000 acres of these warrants outstanding and which have never been filed in the Interior Department. Now, in fact, the entire period since the scrip law of August 31, 1852, came in force up to June 30, 1880, about 1,041,916 acres of scrip have been issued. It stands to reason that anyone in whose favor a claim against the Government is created will present it and demand satisfaction. And there are now no longer any claims on these warrants, except where the title to the land in the Virginia military district of Ohio failed by the nonreturn of the survey and by reason of the subsequent grant of Congress to the State of Ohio on February 18, 1871. Inasmuch as only 170,000 acres passed under that grant the liability of the United States under the proposed bill can not exceed over 170,000 acres and no doubt will be much less.

The Secretary of the Interior, in his decision of the Ellis case on August 7, 1906, held the act of March 3, 1899, was a bar to the claim of Ellis and others. The facts were that on the 20th day of October, 1783, a warrant for 4,000 acres issued to Capt. Henry Heth, of Virginia, for services in the Continental line. This warrant was used to locate four 1,000-acre surveys, three of which had been filed and patented in due time, and 1,000 acres of this warrant is involved in the Ellis case. This 1,000 acres was located in the Virginia military district of Ohio, November 13, 1787. The survey was recorded in the General Anderson's books in Louisville, Ky., March 28, 1788, but was never thereafter returned to the General Land Office at Washington, D. C. By some one's error the survey was returned to the State land office at Richmond, Va., prior to April 20, 1792, and on that date a patent was issued by Virginia to Capt. Henry Heth for 1,000 acres, and no further proceedings were ever taken by his assignees of this 1,000 acres to protect their title. The survey was treated just as though it had been patented by the United States prior to January 1, 1852, until January, 1903, when Mr. Ellis and his associates in title discovered that they never owned the survey 1423 of 1,000 acres, but that it was the property of the board of trustees of the Ohio State University. The facts were these: On January 1, 1852, Ellis and others lost all claim to their land because the survey

1423 for 1,000 acres had not been returned to the General Land Office prior to that date.

On February 18, 1871, Congress ceded this land to the State of Ohio. On March 26, 1872, the State accepted the cession and granted it to the board of trustees of the Ohio State University. The 1,000 acres of warrant became unsatisfied and the property of Ellis and his associates. They brought a suit in the court of common pleas of Adams County, Ohio, in 1904, and established their title to the warrant against all persons who could claim any interest therein. They then presented their claim to commute this 1,000 acres of warrant into scrip on July 9, 1904. On January 15, 1906, the Commissioner of the General Land Office, after having allowed 13 like claims, rejected this one. The parties interested appealed to the Secretary of the Interior, who, on August 7, 1906, sustained the Commissioner of the General Land Office. Knowing that the Secretary of the Interior would sustain the Commissioner, as is always done, the parties interested introduced this bill. Claims similar to the Ellis case to the amount of 5,000 acres are pending and about 2,000 acres more are known of. No others are positively known, although there may be more, but not exceeding 150,000 acres in any event, because at least 20,000 acres in the district were laid on warrants previously satisfied in the State of Kentucky. As all the cases which can be filed or have been filed are like the Ellis case, it is only necessary to refer to that.

We claim the Secretary of the Interior in his decision of the case misconstrued the act of March 3, 1899. That act provided that all outstanding warrants be presented and surrendered by the owners or holders for satisfaction in scrip under the act of August 31, 1852. Now this warrant, at the date of the passage of the act, was not outstanding from the office of the Secretary of the Interior. It was on file with him, in his office, at that time. Consequently the owners and holders of it could not present or surrender it to him after the passage of the law, for he already had it. Before the act of August 31, 1852, its function was to be surrendered to the General Land Office in satisfaction of a survey made under it. Once so surrendered prior to January 1, 1852, that was the end of it. On January 2, 1852, the survey 1423, for 1,000 acres, never having been returned to the General Land Office, became void and the land lapsed to the United States, so that when, on April 12, 1852, the State of Virginia, by resolution, requested the United States to satisfy her unsatisfied Virginia military warrants in scrip, this was one of them.

On August 21, 1852, when Congress passed the scrip law of that date, at the request of the State of Virginia, this warrant was an unsatisfied one, and when on December 6, 1852, Virginia, by its legislature, accepted the scrip law of August 31, 1852, this was one of the unsatisfied warrants which were to be provided for, and its status has so remained ever since. The act of March 3, 1899, had no reference to this warrant, because it had already been presented and surrendered to the Secretary of the Interior and he had it in his custody. The act of surrender, having once been made, could not be repeated, and that act of presentation was to be conclusively presumed to be for the only purpose for which the warrant could be presented and surrendered, i. e., to have it commuted into scrip under the act of August 31, 1852. Being on file and surrendered on March

3, 1899, it should have been presumed to be there for the purpose of commutation, and could be there for no other purpose. Hence the Secretary of the Interior erred when he held that the act of March 3, 1899, had any application to the case of warrants on file.

The act of August 31, 1852, confers a valuable property right on the owners and holders of certain warrants, in pursuance of the compact between Virginia and the United States expressed in the resolution of the Virginia legislature of April 12, 1852, and December 6, 1852, and the act of Congress of August 31, 1852, but the latter is so drawn that the Secretary can defeat the claims by rejecting them, and no redress for this action can be had except by application to Congress, and that is why we are here. Congress received these lands from Virginia on March 1, 1784, and agreed to use them to satisfy the Revolutionary bounty land warrants. It so used them until January 1, 1852, when it closed the district. On April 12, 1852, Virginia by its legislature asked Congress to satisfy the remaining warrants in land scrip. Congress by the act of August 31, 1852, undertook to do this on condition that Virginia would relinquish all claims to the land in the Virginia military district of Ohio. Virginia accepted the condition by act of its legislature December 6, 1852, and by a deed made by its governor. Congress was bound by its compact with Virginia to commute every one of these warrants, for it received a grant of land for that purpose amounting to 4,204,800 acres.

The act of March 3, 1899, in so far as it undertakes to bar or declare invalid these warrants, is the very rankest repudiation of a just debt, and it is questionable if Congress had the power to pass such an act or whether the courts would sustain it. From March 1, 1784 until January 1, 1852, Congress had been administering a trust on behalf of Virginia. It had received an ample fund in land with which to execute the trust. On December 6, 1852, Virginia released the land from the trust and gave the United States a clear title, and on February 18, 1871, Congress gave the land to the State of Ohio. The result was that many of these warrants had been used to make surveys which had either never been returned, as in the Ellis case, or were returned after the time fixed by law for return. The land covered by these two classes of surveys reverted to the United States January 1, 1852, and became free from the claims of Virginia.

Then the United States holding these lands free from any claim under the warrant, granting them to the State of Ohio February 18, 1871, and the State accepted them March 26, 1872. Parties had been holding them under private ownership for eighty-four years at the time of the grant and all supposed they owned them, and the United States also supposed these lands had passed to private ownership. But it was in the opening of the year 1880 claimed otherwise ,and Congress passed the act of May 27, 1880, which, if it could have had any effect, would have relieved Ellis and his associates. The agitation continued and Congress passed the act of August 7, 1882, which would have effectually cured the title of Ellis and others could it have had any effect. But it was plain to every one that when Congress made the cession on February 18, 1871, it conveyed all the title it had and that such title included all the land covered by surveys either never returned, or not, prior to January 1, 1852.

The Supreme Court, however, set the construction of the grant forever at rest by its decision of February 21, 1885, in Fussell *v.* Gregg, 113 U. S., 550. There it held that on February 18, 1871, these nonreturned surveys were the property of the United States and went with the grant. This decision was approved and followed in Board of Trustees *v.* Cuppett and Webb, 52 O. S., 567. Hence, in seeking to have this bill passed, we simply are seeking to do in a different way what Congress attempted to do by the acts of March 27, 1880, and August 7, 1882, but failed to accomplish.

Our warrant of 1,000 acres was never satisfied. It has remained unsatisfied since January 2, 1852. The act of March 3, 1899, as construed by the Secretary of the Interior, to the great shame and disgrace of the United States, repudiated it, though the latter held the fund with which it was to be satisfied and gave it to the State. This 1,000 acres of warrant has never been staisfied by the United States, though it agreed to do so in the act of August 31, 1852. That agreement was repudiated by the United States if the act of March 3, 1899, is to be construed as the Secretary of the Interior rules it must be.

The United States has faithfully fulfilled its obligation to the owners of warrants to the extent of 1,041,967 acres. Why should it now repudiate its obligation to the owners of the remaining 50,000 acres, if so many there be? When this matter is looked at properly there is but one side to it. When the case of Ellis and his coclaimants are considered it will illustrate all like claims in the District. Those parties and their predecessors in title held lands under these warrants for one hundred and sixteen years and the very youngest claimants held them fifty-one years. Had they all been undisturbed the pact between Virginia and the United States would have been carried out and no one would have been injured. The people would have held their lands and the warrants would have been satisfied, as both the United States and Virginia intended they should be, but by reason of the fact that the surveys were forfeited and became void January 2, 1852, by reason of the fact that the United States became thereby reclothed with the title to the lands, free of the claims of the warrant holders, and by reason of the facts that on February 18, 1871, the United States granted away all its title, the whole scheme and purpose of allowing these warrant holders to hold their lands has been defeated. Congress tried to save them and placed them in the same position they would have been had their surveys not been forfeited for nonreturn at the proper date by the terms of the acts of May 27, 1880, and August 2, 1882, but those acts had no subject-matter on which to operate, and hence were ineffective. We are here with a 1,000-acre warrant which has never been satisfied in land or in scrip. It is just a debt of the United States. It is a part of the price paid for the creation of the United States as a nation. We are here as the successors to the rights of Capt. Henry Heth, of Virginia, who served in the Revolutionary war three years in the continental line. The United States obtained the land to satisfy our warrant and it permitted Captain Heth and his successors to occupy it in peace and quiet for one hundred and sixteen years and then took it away from us.

Under the decision of the Supreme Court of the United States in Fussell *v.* Gregg, 113 U. S., 550, it can never restore us the land, but

it can keep faith with Virginia and with itself and commute our warrant into scrip, and that it is in honor bound to do. Had the Secretary of the Interior followed the 13 decisions of his own office granting similar claims since March 3, 1890, and prior to January 15, 1906, we would not have been here urging the passage of this bill. Had the Secretary of the Interior followed the following 13 decisions of the Supreme Court of the United States in construing the act of March 3, 1899, we would never have been here asking the passage of this bill. Here they are: United States *v.* Alexander, 12 Wallace, 152; Lake County *v.* Hollins, 150 U. S., 670; Nadd *v.* Barrone, 91 U. S., 426; Missouri *v.* Harper, 169 U. S., 635; New Lamp Chimney Co. *v.* Ansonia Brass and Copper Co., 91 U. S., 663; Aldrige *v.* Williams, 3 Howard, 34; Glover *v.* United States, 164 U. S., 296; Bates Refrigerating Company *v.* Sulzberger, 157 U. S., 1; Red Rock *v.* Henry, 106 U. S., 604; Bernier *v.* Bernier, 130 U. S., 2561; Amy *v.* Watertown, 130 U. S., 320; Reynolds *v.* McArthurs, 2 Peters, 434; and we aver that in making the construction of the act of March 3, 1899, as the Secretary did, he discarded the plain and obvious doctrine of each and every one of these decisions. We propose to review the decision of the Secretary of the Interior in rejecting our claim.

First, he holds the act of March 3, 1899, to be a bar to our claim. That holding implies that on March 3, 1888, our claim was in full force and vigor and capable of being barred. If it was in force on March 3, 1899 (and we agree with the Secretary on that point) we submit it was not barred by the act of March 3, 1899.

That act referred only to warrants not physically presented and in the office of the Secretary at its date. It required outstanding warrants to be brought in. Ours was then in the possession of the Secretary, in his office. We could not present and surrender it, for that had already been done. That act did not require the presentation of applications for scrip. It only required the presentation and surrender of warrants. Moreover, if the Secretary was correct in holding it to be a bar, then it in effect repeals the scrip law of August 31, 1852, which is not done in the act of March 3, 1899, either directly or indirectly. The Secretary holds the fact that our warrant has already been presented and surrendered amounts to nothing; that we must, in the twelve months succeeding March 3, 1899, have taken it off the files, which he would not have permitted, and filed an application for scrip, when the law only required the presentation and surrender of the warrant.

The Secretary ignores the fact that the act must only operate in the future and can not be retroactive, and he utterly ignores the term "present and surrender" used in the act. Our construction of the act of March 3, 1899, that it does not relate to any warrants already presented and surrendered is the correct and logical one, as it gives force and effect to every word and term used in the act. It is in harmony with the twelve decisions of the Supreme Court of the United States referred to, and it does not repeal the scrip law of August 31, 1852. It is to be presumed that Congress did not intend to cut off any warrants which were in standing in the Secretary's office and of which it had full notice. It is to be presumed that Congress intended to commute into scrip every warrant of which

it has knowledge and that the United States intended to be honest and to discharge those obligations of which it had notice.

It desired claims of which it has notice to be filed within twelve months on pain of being forever barred. There is no defense nor can there be any defense to the attempt of the Government to cut off these warrants. The United States having engaged to discharge them, should do so. There is only one honest and straightforward way, and that is for the United States to discharge its obligations.

The Secretary in his decision speaks of a doctrine announced by Chief Justice Marshall, in Jackson *v.* Clark (1 Peters, 66), that the reservation of the land in the Virginia military district was not absolute. That case has and can have no bearing on our claim for scrip. After the passage of the act of August 31, 1852, in consequence of the resolution of the legislature of Virginia on April 12, 1852, the decision of the Supreme Court as to the character of the title of the United States to the district prior to August 31, 1852, are matters of no consequence whatever. The Secretary goes on to discuss the act of March 23, 1804 (2 Stat., 274), fixing the time within which locations could be made and of the various acts following the same, giving further extensions. These acts have no bearing on the claims of Ellis and others. On April 12, 1852, Virginia asked an appropriation of scrip for these warrants, and offered to accept it as a full discharge of all the claims of the State on the United States on account of her land bounties, to her officers and soldiers for services in the Revolutionary war.

The scrip law of August 31, 1852, was passed on condition that it be taken as a full and final adjustment of all bounty-land claims of the officers and soldiers of Virginia for services in the Revolution. And the State of Virginia was, by a proper act of the legislature, to relinquish all claim to the lands on the Virginia military district of Ohio.

Thereupon Virginia, by resolution of its legislature of December 6, 1852, relinquished all claims in the Virginia military district of Ohio and accepted the act of August 31, 1852, as a full and final adjustment of all bounty-land claims to her officers and soldiers for services in the Revolutionary war. Not only that, but the resolution directed the governor of the State to make a deed to that effect. Now, our rights depend on the two resolutions of the Virginia legislature of April 12 and December 6, 1852, and the scrip law of August 31, 1852, and any decisions of the Supreme Court as to the conditions of title to the land in the district in 1828, when the case of Jackson *v.* Clark (1 Pet., 666) was decided, on any condition of title to land in the district arising under statutes for making locations prior to January 1, 1852, had nothing to do with the case. Our rights began with the scrip law of August 31, 1852. Under that law there are but three questions:

First. Is the warrant genuine?

Second. Is the warrant unsatisfied?

Third. Are Ellis and his associates the proprietors?

These are the only questions to be determined in our case, and the discussion of all other questions is out of place. No one ever contested that the Heth warrant was not genuine or properly owned. The Government has already issued three patents on it for 3,000

acres. The Secretary erroneously decided our warrant satisfied, but we will discuss that proposition later.

We will discuss the question, Are we the present proprietors? Heretofore, and ever since the land office was established, it has been the custom of that office to require parties making claims to resort to the local courts to have the questions of conflict decided. When such decisions were made a transcript of the same was filed in the land office. It has always been the practice there to regard the questions settled in the decrees as finally adjusted, and for the office to act in accordance with them. Now, in this case the land office directed and required Ellis and his coclaimants to establish their claims in the courts of the State, as had been done in the twelve previous cases allowed since April 2, 1902, and when they had established their claims and filed a decree the Secretary now says it belongs to the Executive Department to determine whether a warrant is outstanding and unsatisfied and whether the owner is entitled to scrip, thus by a stroke of the pen reversing the policy of the land office, fixed, settled, and followed for ninety-four years previously.

After thus disposing of the decree of the local courts determining the condition of the warrant and its ownership, and reversing the practice of the office for ninety-four years, he proceeds to say we bought the lands and were never evicted. The title to the land passed from the United States to the State of Ohio February 18, 1871, and from the State to the university March 26, 1872. The board of trustees of the Ohio State University had the title to this land from March 26, 1872. It did not disturb these parties till January, 1903. The university is simply an agent of the State, and the statute of limitations does not run against it.

When, in January, 1903, it demanded of these parties that they recognize its title there was nothing to do but to make terms with it. Under the advice of better lawyers than those who write the opinions of the Secretary of the Interior they did so, and there was nothing else they could have done. The Supreme Court has decided that the title had passed from the United States to the State on February 18, 1871, and under that decision the title was in the board of trustees of the Ohio State University.

There was nothing to do for claimants but recognize the law as laid down by the Supreme Court, and this was done, as it ought to have been done. When the Supreme Court once decides a matter it should not be litigated over again, but as good citizens the decision must be observed in every subsequent case without further litigation. But the most remarkable thing remains to be discussed. The Secretary of the Interior, after finding that we had a claim for scrip (which presupposes and admits our loss of the land) and that it was barred by the act of March 3, 1899, now holds in conclusion that we never had any claim for scrip and that our title to the land held under our warrant from November 13, 1787, until January 1, 1852, was confirmed under the acts of May 27, 1880, and August 7, 1882, and consequently our warrant was satisfied under these acts and we had no right to call for scrip. In other words, he holds that the cases of Fussell *v.* Gregg and Coan *v.* Flagg decide to the very contrary of what the court did determine and announce and just contrary to what the legal profession throughout the land under-

stands they did decide. He quotes the court in Fussell *v.* Gregg (113 U. S., 550) as deciding on the defendant's title. That it never did. It passed on the plaintiff's title and decided that he had none and that the petition should be dismissed. No decision whatever was made on the defendant's title. The court did, however, decide that the failure to return plaintiff's survey to the General Land Office on or before January 1, 1852, cut up his equitable title by the roots, and he thereafter had none whatever. It also decided that the title passed to the State of Ohio from the United States on February 18, 1871, was all the title the United States ever had which was a complete and absolute one. The result and effect of the decision was that after February 18, 1871, there was no subject-matter in the United States on which to legislate upon on May 27, 1880, and on August 7, 1882.

The Secretary says of the cases, that defendants, in Russell *v.* Gregg, asked and obtained affirmative relief. On page 553 of the report of the case it is said that the defendant denied the title of plaintiffs and pleaded the statute of limitations of twenty-one years in bar of the relief demanded by plaintiff. On the same page it is stated that in the circuit court the court dismissed the bill and plaintiff appealed. On page 555, the court said plaintiff had failed to make good the case which she stated in her bill. On the same page the court said:

> That by reason of the failure of Archibald Golden, or his legal representative, to make return of the survey to the General Land Office within the time prescribed by the several acts of Congress, the entry and survey became vacated, annulled, and void, and the lands covered thereby became released from such entry and survey, so that at the commencement of the suit plaintiff was without any interest or estate in the lands described in the bill.

The court, after reviewing the legislation on the subject of making and returning locations in the district, said, on page 558:

> The survey of the entry of Archibald Golden has to this day never been returned to the Secretary of War, or, as provided by subsequent acts, to the General Land Office of the United States.

That is true of the survey of Ellis and others. After reciting the various acts of extension of time to file surveys the court said, at the bottom of page 550:

> As neither Archibald Golden nor any of his heirs or representatives ever made a return of the survey of the land in dispute either to the Secretary of War or to the Commissioner of the General Land Office, either before or after the 4th day of January, 1852, the third section of the act of March 23, 1804, cuts up by the roots all the right and title derived from the location and survey of Archibald Golden.
>
> Under the acts of Congress Gorgon, by his entry and survey, acquired title, depending on his performance of certain prescribed conditions. His failure to perform the conditions stripped him of all interest or estate in the lands covered by his entry and survey.

This decision is to the effect that the United States held the land where surveys were not returned at all, or returned too late, free of all the military claim after January 1, 1853.

Now, with such a title, on February 18, 1871, the United States conveyed all its interest in the lands to the State of Ohio. Where, then, was there any interest or estate left to the United States upon which the acts of May 27, 1880, or August 7, 1882, operate? There was none whatever.

The court said, on page 565: "The plaintiff can derive no aid from any act of Congress passed since the 1st of January, 1852." Now it happens that the case of Frank Ellis and his associates and Archibald Golden are just the same. In neither case was the survey ever returned to the General Land Office.

The court further said on that day (January 1, 1852): "All interest and estate of the heirs of Archibald Golden in his entry of November 6, 1824, ceased and determined."

Could language be plainer? If the legislature, since January 1, 1852 (and the decision was pronounced February 21, 1885), could not help Golden, how could it help Ellis and others whose titles were precisely the same? The court did not pass on defendant's title, but affirmed the judgment of the circuit court.

We now come to look upon the decision of Coan *v.* Flagg (113 U. S., 550). The writer was of conusel in that case and may be supposed to have known what the decision was even better than the law clerks or the Secretary of the Interior. The case directly construed the act of February 18, 1871, and incidentally those of May 27, 1880, and August 7, 1882.

On page 126, the court said:

> The trust (in favor of Virginia) had been satisfied and may be regarded as having been extinguished. Whatever of these lands remained at the time which had not been appropriated in accordance with the terms of existing law, so as to secure the claimant a right to call for patent, was subject to the disposal of the United States for its own use and according to its own pleasure.

On page 127, at the bottom, and upon page 128 the court said:

> The meaning of the act of February 18, 1871, therefore seems to be to grant to the State of Ohio all the lands in the Virginia military district which at that time had not been legally surveyed and sold by the United States, in that sense of the word which conveys the idea of having parted with a beneficial title. The lands in controversy were of that description.

Now, as the grant conveyed a survey returned too late, it also covered a survey never returned at all.

The Supreme Court further said, on page 129:

> If the title of the Ohio Agricultural and Mechanical College, under the act of February 18, 1871, was valid, the act of May 27, 1880, giving for the future a new interpretation of that act, could not have the effect of divesting its title.

Then the court held that the act of May 27, 1880, except the fourth section, did not aid or cure the title of Coan. Further, on page 129, the court said: "The act of August 7, 1882 (22 Stat., 348), does not affect the present case." Here the court said that neither the act of May 27, 1880, or August 7, 1882, aided or cured the title of Coan, and decided against him.

Since the above cases were reported there is one case decided in the supreme court of Ohio which bears on this question. It is the Board of Trustees *v.* Cuppett. (52 O. S., 567.)

It purports to follow Fussell *v.* Gregg and Coan *v.* Flagg. In this case the land was entered and surveyed in time, but the survey was not returned to Washington, D. C., till after January 1, 1852, and, in fact, was returned at the same time as the survey in Coan *v.* Flagg, and a patent was issued by the United States April 27, 1871. The court held the title vested February 18, 1871, in the State of Ohio, and that the defendant Cuppett and Webb had no beneficial title on February 18, 1871. The court sustained the title of the State under the act of

February 18, 1871. The court sustained the title of the State under the act of February 18, 1871, as against the title of the defendants below under the entry, survey, and patent. The court, on page 588, paid its respects to the acts of May 27, 1880, and August 7, 1882, and said:

> But if, as we have seen is the case, the indefeasible title was vested in the State, the lands cease to be within the control of Congress and such subsequent legislation could not divert or otherwise affect the State's title to them, though ceded as a donation, any more than the acts and declarations of any other grantor, after he had parted with his title, by valid conveyance, could affect the title of his grantee.

The court proceeded to say that the United States could not revoke the grant by subsequent legislation, and that it could not create new rights, but only protect those then in existence when the act of cession to the State was passed.

First. Thus we see that as to the 1,000 acres of warrant 1894, claimed by Ellis and associates, is genuine because the United States has issued three patents on it.

Second. The warrant is unsatisfied because the survey was never returned to the General Land Office, Washington, and the land reverted to the United States January 1, 1852. The claimants have yielded up the land to the grantee of the United States under the cession of February 18, 1871. The Land Office has heretofore issued scrip in many such cases.

Third. The claimants, Ellis and others, are the present proprietors, so ascertained by a decree of court obtained by directions of the Land Office, and which under its practice for ninety-four years it is bound to accept. The Commissioner having refused to commute the warrant into scrip, the only remedy is to come before Congress with this bill and ask that the bar of the statute of March 3, 1899, which keeps them out of their just claims, be removed.

Respectfully submitted.

NELSON W. EVANS.

BRIEF FILED BY MR. NELSON W. EVANS, OF PORTSMOUTH, OHIO.

Statement as to House bill 19517, identical with Senate bill 5881.

This bill grows out of the improper construction made January 15, 1906, by the Department of the Interior on the law of March 3, 1899, volume 10, page 143, General Statutes, in deciding a case arising under the scrip law of August 31, 1852. The act of March 3, 1899, notified the owner or holders of all outstanding military land warrants issued by the State of Virginia for military services in the Revolutionary war to present and surrender the same to the Secretary of the Interior within twelve months from the passage of the act, for the purpose of commuting them into scrip under the act of August 31, 1852, and in default of so doing they were to be forever barred and invalid.

Under this law of 1899 from March 3, 1900, till January 15, 1906, the Department of the Interior held that this act had no application to warrants already surrendered and on file at the passage of the act;

that the act related only to warrants physically outstanding on the 3d of March, 1899. These warrants were issued by Virginia from October, 1783, until March, 1840, and those of the continental line were locatable in the Virginia military district of Ohio, comprising 22 counties and parts of counties in Ohio between the Scioto and Little Miami rivers and a line drawn between their sources. This district contained 8,570 square miles and 4,504,800 acres, and no one could obtain title to any land in the district except by locating one of these warrants.

The warrants were, by law, expressly made assignable, and once located by survey the owner was obliged to hold on to his location so long as he was undisturbed by other locators. The warrants ran with the land and protected it so long as the survey was held valid. When the survey became invalid from any cause the warrant revived, and prior to January 1, 1852, could be relocated in the district. After that date the warrant could only be satisfied in scrip under the law of August 31, 1852, which was enacted in pursuance of a compact between the United States and Virginia that each and all of these warrants not satisfied in land should be satisfied in scrip. The United States satisfied 4,334,800 acres of these warrants in land in the district. It had the land from Virginia for this purpose and all the remaining land owned by Virginia northwest of the Ohio River as a consideration for undertaking to satisfy the warrants in scrip. After the passage of the scrip law of August 31, 1852, it satisfied 1,041,916 acres of these warrants in scrip. When it ceded these lands to the State of Ohio it turned out that there were 170,000 acres which the warrants, though located, would not hold, and this quantity went under the grant. Many people in the district held lands under valid warrants, where the land was properly surveyed, but where the survey has not been returned in time and for that reason became void.

The State of Ohio gave these lands to its university. The result has been that the university is now engaged in examining every title in the district where the patent was issued after January 1, 1852, and many persons have been compelled to obtain titles for the Ohio State University who had never anticipated that Congress had given their lands away on February 18, 1871. In 1851 the State of Ohio determined to put every survey in the military district on the tax rolls and make the land pay taxes. The record of surveys was obtained for each county, and all unpatented surveys were taxed. Many of the original proprietors of surveys had left them to be sold for taxes, and the result was that hundreds of unpatented surveys were sold for taxes. For some time prior to 1881, one Jeremiah Hall had traveled Virginia and purchased of the heirs of the Virginia warrantees their claims to surveys in the district. He would make a connected title to the warrants in the land office and procure patents to himself or his friends. Then he would bring suits in ejectment, and would recover lands where the parties had held them by tax title in some cases for nearly one hundred years.

It became necessary to get rid of Jerry Hall and his operations. No one could defeat his recovery in an ejectment suit, because the statutes of limitation did not begin to run till the patent had issued. In each case he sued directly after obtaining the patent.

Justice Matthews, while on the circuit at Toledo, Ohio, in 1881, undertook to get rid of Jerry Hall. The case is reported in the 8th

Federal Reporter, page 384. He reviewed the old case of Taylor *v.* Myers (7 Wheaton, 23), decided in 1822, which held that the failure to return a survey within the time fixed by law forfeited it. All the lawyers in the Virginia military district of Ohio had forgotten this case except William Lawrence, of Bellefontaine, and he intended if he was ever on the other side to beat it with the doctrine of a presumed grant. Then there was the remark of the great Chief Justice Marshall in Jackson *v.* Clark and Ellison (1 Peters, 666), that Clark might never obtain title (and he never did till the Ohio State University got after him in 1888), but Jackson should not dispossess him. In order to get rid of Jerry Hall it was necessary to hold that all surveys not returned prior to January 1, 1852, were invalid, but Justice Matthews never hesitated. He held that all surveys not returned prior to January 1, 1852, were forfeited and the land was freed from them. He saved all of Jerry Hall's prospective victims, the tax-title holders, but he destroyed the title to 170,000 acres of surveys which had never been returned and which was supposed to be good. Justice Matthews steered clear of Scylla, but struck Charybdis's center. While he protected the owners of the nonreturned surveys from operations like those of Jerry Hall, he turned them over to the Ohio State University, which began to hunt them down and have kept it up to this day. Congress was surprised and dazed, but when the Supreme Court, on February 21, 1855, affirmed Justice Matthews in the same case, in 113 U. S., 550, the matter was ended. Congress had expressed its protest in the acts of May 27, 1880, and August 7, 1882, confirming these defective titles, but the decision of the Supreme Court in 1885 rendered these acts utterly futile. The matter came before the Supreme Court a second time, on October 31, 1887, in the case of Coan *v.* Flagg, which was argued in open court by me for the appellant and by the late Hon. Wells A. Hutchins for appellee. The latter defended on a single point that the survey had not been returned until April 26, 1852, two months and twenty-two days too late, and he won. Thus the court, having an opportunity to reconsider its decision in Fussell *v.* Gregg, affirmed it. The whole legal fraternity in the Virginia military district of Ohio were dazed by the first decision. They expected the court to find some way to save the owners of the defective surveys, but were disappointed.

Congress when it passed the act of February 18, 1871, never anticipated the construction which would be given it by the Supreme Court, and could it have done so, it is safe to say no act would have been passed which would have bound the owners of the nonreturned surveys hand and foot and turned them over to the Philistines of the Ohio State University. While the holders of the defective surveys were saved from Jerry Hall and his associates they were delivered over to the State university. These sufferers had paid taxes to the State of Ohio on the property of the United States up to 1871, and thereafter to the State of Ohio on its property. In some cases these taxes amounted to several times the value of the land. The title to the land held by the people under warrants on the nonreturned surveys have been taken away and destroyed by the act of Congress, and the warrants under which they held them became unsatisfied and the holders of them, being the people

who lost their lands by act of Congress, are entitled to have them satisfied. There can be no doubt of the following propositions:

First. That these warrants once satisfied are now unsatisfied by construction of the act of February 18, 1871, by the Supreme Court.

Second. That the owners of the surveys who held these lands when the title failed are the owners of the warrants.

Third. That the United States under compact with Virginia in 1852 understook to satisfy these warrants.

Fourth. That the United States received in lands in the district and outside from the State of Virginia ample consideration for the assumption of these warrants. Now, if in private life a trustee would give away his trust fund to a third party and then when called on by the beneficiary to pay refuse to do so, it would be regarded not only dishonest and dishonorable, but it would be punished criminally.

Since March 3, 1900, the Ohio State University has taken up 43,000 acres of these lands and is still engaged in the business. Shall the owners of these 43,000 acres be denied satisfaction of the warrants under which they held their land? These warrants are unsatisfied. The debt of the United States is unpaid. The present owners are asking for payment. Most of them are poor people. Many of them are needy. There are only two bankers in the whole lot. They said to the United States you have satisfied 4,334,800 acres of these warrants in lands in the district. You have satisfied 1,041,916 acres in land scrip. We are here the owners of a few thousand acres which have not been satisfied. You permitted us to hold our lands under the warrants for nearly one hundred years and have taken them from us and left us with the warrants unsatisfied. We, the present owners, represent the claims of the Revolutionary soldiers, whose blood and sacrifices paid for our warrants. With us stands the estate of General Washington who has repudiated warrants to the amount of 3,100 acres. All the others have living representatives. These warrants are our property and just claims against the United States. From March 3, 1900, till January 15, 1906, the land office regarded our claims as honest and just, and allowed them as presented.

Since January 15, 1906, the land office changed front and has disallowed them. Why this change of policy? It is for the United States to speak and not us. Have we been denied because of the Oregon land frauds? We know of no other reason. The United States having allowed 5,386,716 acres of these claims in lands and in scrip, why should the little remnant we represent, a possible 170,000 be denied? Because we have been dispossessed of our lands under the authority of the United States since March 3, 1900, is that any reason why we should be denied satisfaction of our warrants?

The Department of the Interior has so construed the act of March 3, 1899, as to reject our claims and destroy our property rights in these warrants. There is no remedy for the wrong inflicted on us but an act of Congress declaring the first construction of the act of March 3, 1899, by the Interior Department is right and the last one is wrong. In our claim we are sustained by every principle of honor and honesty, by numerous decisions of the Supreme Court, by the former decisions of the Interior Department, and by every

sentiment of natural justice. We ask the honorable committee to approve our bill. The following claims are represented in this bill:

The Capt. Henry Heth warrant of 1,000 acres in survey No. 1423, owned by Frank W. Ellis, W. S. Jackson, Albert Swearingen, Edward and Amos P. Womacks, Sarah Hile, James A. Redman, Eli Swearingen, Wilson W. Grimes, and William A Bess.

The Mace Clements warrant No. 738 in survey No. 386 for 1,000 acres, owned by Lines and Emma J. Pangburn, Ferdinand F. Hauke, E. W. and Ruth M. Fitch, Sarah B. Stephenson, B. F. Garrison, Eliza B. Campbell, John Trapp, Cora S. Yeaton, Jacob F. Groh, Emma Grim, and Henrietta Kowler.

Capt. Wm. Vause, warrant No. 3554, 1,000 acres, located in survey 1694 and owned by Robert W. Miller, Amanda A. Moore, Edward H. Jamieson, Wm. W. and Ella Brady, Martha M. Bayne, and Abby M. Culter, Ira Shaw, Sarah A. Cox, Kate Armstrong, N. S. Mann, Samuel Smith, and John Free.

The Capt. Thomas Keith warrant, No. 9182, for 592½ acres, located in the survey No. 15880, owned by Alfred F. McCormick, Harry W. Miller, Kate Mary Coffin, Guilford S. Heaton, Bertram Heaton, Cora M. Heaton, and Mary Vaughn.

The Capt. Thomas Keith warrant, No. 9180, for 592½ acres, located on survey 15881, owned by Simon Labold, Edward J. Daehler, Kate Mary Coffin, Guilford S., Bertram H., and Cora M. Heaton, and Mary Vaughn.

The Flagg Estate Company has 1,433 acres of surveys and warrants in Adams County and Scioto County, Ohio, to which the claims of the Ohio State University to the land has been sustained in the last year.

The H. D. Mirick warrant, No. 540, founded on survey No. 15575, 120 acres.

The Mayo Carrington survey, No. 386, 1,000 acres, owned by James A. Fizzel and others.

The William Smith survey, of 425 acres, on warrant No. 9175, owned by John Schner and others.

Henry Oursler and others, warrant 5703, survey 16197, 100 acres.

Anniette I. Fisher, warrant ——, 350 acres.

In addition to the above, there are 3,960 acres known to us, 860 acres in Brown County, Ohio, and 3,100 acres belonging to the estate of George Washington. Of the foregoing all the warrants were on file prior to March 3, 1899, except 3,100 acres. There may be 170,000 acres all told, but can not be more.

By Nelson W. Evans, of Portsmouth, Ohio, in behalf of the parties above named. January 8, 1907.

The following are the Virginia resolutions:

[Resolutions adopted April 12, 1852. Virginia Acts, 1852, p. 316.]

Resolved by the general assembly of Virginia, That our Senators in Congress be instructed and our Representatives be requested to use their best exertions to procure the passage of a law making a further appropriation of scrip to satisfy the Virginia military land bounty warrants now outstanding; and to this end that our Senators be instructed, and our Representatives be requested to introduce in the Senate and House of Representatives a bill providing for such appropriation of scrip.

And whereas the law of Virginia allowing the presentation of land-bounty claims has expired by limitation, and ought not to be revided: Therefore be it

Resolved, That our Senators be instructed and our Representatives be requested to accept such appropriation of scrip as a full discharge of all claim of the State upon the United States on account of the land bounties of her officers and soldiers for services in the war of the Revolution.

[Resolution adopted December 6, 1852. Virginia Acts, 1852-3, p. 357.]

Resolved by the general assembly, That the act of Congress approved 31st August, 1852, entitled "An act making further provision for the satisfaction of Virginia land warrants, be, and the same is hereby, accepted as a full and final adjustment of all bounty-land claims to the officers and soldiers, seamen, and marines of the State of Virginia for service in the war of the Revolution; and the governor of the State be, and he hereby is, authorized and required to execute forthwith a proper deed, relinquishing for and on behalf of this State all its claim to the lands in the Virginia military land district in the State of Ohio.

The scrip law passed in pursuance of the first resolution will be found in volumn 10, page 143, General Statutes.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., June 7, 1899.

The attention of all persons interested therein is hereby directed to the following extract from the act of Congress approved March 3, 1899, relating to outstanding military land warrants, and to the act of Congress approved August 31, 1852, making further provision for the satisfaction of Virginia land warrants, to wit:

AN ACT Making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums be, and the same are hereby, appropriated, for the objects hereinafter expressed, for the fiscal year ending June thirtieth, nineteen hundred, namely:

* * * * * * *

Purchase of land records: To enable the Secretary of the Interior to purchase from Albert Douglas, administrator of the estate of Samuel Kendrick, deceased, late of Ohio, certain original records and indexes of lands, surveys, maps, and papers pertaining to lands and locations within the Virginia military districts of Kentucky and Ohio, fifteen thousand dolars; and the owners or holders of all outstanding military land warrants or parts of such warrants issued or allowed by the State of Virginia for military services performed by the officers and soldiers, seamen, or marines of the Virginia State and Continental lines in the Army or Navy of the Revolution are hereby notified and required to present and surrender them to the Secretary of the Interior within twelve months from the passage of this act for his action under the provisions of the act entitled "An act making further provisions for the satisfaction of the Virginia land warrants," approved August thirty-first, eighteen hundred and fifty-two; and all such warrants or parts of warrants not so presented and surrendered to the Secretary of the Interior shall be forever barred and invalid.

* * * * * * *

Approved, March 3, 1899.

AN ACT Making further provisions for the satisfaction of Virginia land warrants.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all unsatisfied outstanding military land warrants or parts of warrants issued or allowed prior to the first day of March, eighteen hundred and fifty-two, by the proper authorities of the Com-

monwealth of Virginia, for military services performed by the officers and soldiers, seamen, or marines of the Virginia State and Continental lines in the Army or Navy of the Revolution, may be surrendered to the Secretary of the Interior, who, upon being satisfied, by a revision of the proofs or by additional testimony, that any warrant thus surrendered was fairly and justly issued in pursuance of the laws of said Commonwealth, for military services so rendered, shall issue land scrip in favor of the present proprietors of any warrant thus surrendered for the whole or any portion thereof yet unsatisfied, at the rate of one dollar and twenty-five cents for each acre mentioned in the warrant thus surrendered and which remains unsatisfied, which scrip shall be receivable in payment for any lands owned by the United States subject to sale at private entry; and said scrip shall, moreover, be assignable by indorsement attested by two witnesses. In issuing such scrip the said Secretary is authorized, when there are more persons than one interested in the same warrant, to issue to each person scrip for his or her portion of the warrant; and where infants or feme coverts may be entitled to any scrip, the guardian of the infant and the husband of the feme covert may receive and sell or locate the same: *Provided.* That no less that a legal subdivision shall be entered and paid for by the scrip issued in virtue of this act.

SEC. 2. *And be [it] further enacted,* That this act shall be taken as a full and final adjustment of all bounty-land claims to the officers and soldiers, seamen, and marines of the State of Virginia for services in the war of the Revolution: *Provided,* That the State of Virginia shall by a proper act of the legislature thereof relinquish all claim to the lands in the Virginia military land district in the State of Ohio.

SEC. 3. *And be it further enacted,* That in settling the claims of the State of Ohio, under the acts of March second, eighteen hundred and twenty-seven, and May twenty-fourth, eighteen hundred and twenty-eight, granting lands to said State for canal purposes, the same principles shall be acted upon as have been applied under the provisions of the act of May the ninth, eighteen hundred and forty-eight, entitled "An act in addition to an act therein mentioned," for the settlement of the claims of the State of Indiana, accruing under the said act of March the second, eighteen hundred and twenty-seven.

Approved, August 31, 1852.

DEPARTMENT OF THE INTERIOR,
Washington, May 25, 1906.

Hon. HENRY C. HANSBROUGH,
Chairman Committee on Public Lands,
United States Senate.

SIR: Your letter has been received, inclosing copy of Senate bill 5881, entitled "A bill to amend and construe an act entitled 'An act making appropriations for sundry civil expenses of the Government for the fiscal year ended June thirtieth, nineteen hundred, and for other purposes,' in so far as the same relates to Virginia military continental, or State land warrants." The bill in question, among other things, allows the holders of outstanding Virginia military warrants three years within which to present such warrants to the Secretary of the Interior for action under the act of August 31, 1852.

In response thereto I have the honor to transmit herewith copy of a letter from the Commissioner of the General Land Office, reporting upon the bill in question, in whose conclusions as to the inexpediency of the legislation proposed I concur.

Very respectfully,

E. A. HITCHCOCK,
Secretary.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., May 21, 1906.

The SECRETARY OF THE INTERIOR.

SIR: This Office is in receipt by reference from you on April 30, 1906, for consideration and report, of a bill, S. 5881, which reads as follows:

A BILL to amend and construe an act entitled "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred, and for other purposes," in so far as the same relates to Virginia military, continental, or State land warrants.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the foregoing act, in so far as it relates to Virginia military, continental, or State land warrants, shall not be construed to relate to any warrants which were on file, by originals or certified copies, at the date of the passage of said act, or on which locations were lost by failure to return surveys prior to January first, eighteen hundred and fifty-two, but that the settlement of the same shall be proceeded with under the act making further provision for the satisfaction of Virginia land warrants, approved August thirty-first, eighteen hundred and fifty-two, precisely as though such original act had never been passed; and the owners or holders of all outstanding military warrants, or parts of such warrants, issued or allowed by the State of Virginia for military services performed by the officers and soldiers, seamen, or marines of the Virginia State and continental lines of the Army or Navy of the Revolution, are hereby notified to present and surrender them to the Secretary of the Interior within three years from the passage of this act for his action under the provisions of the act approved August thirty-first, eighteen hundred and fifty-two, hereinbefore recited; and in claims or cases pending or hereafter to be presented the owners of the land covered by any warrant or part of warrant ousted by the Ohio State University shall be deemed and held the owner or owners of such warrants or parts of warrants to the same extent and in the same manner as they held the land which the warrant failed to hold.

I have the honor to report that the language used in this bill in describing the class of warrants affected is not the same as that employed in the act of August 31, 1852 (10 Stat. L., 143), and in the act of March 3, 1899 (30 Stat. L., 1099). Whether the terms "military, continental, or State land warrants" embrace warrants other than those included within the provisions of the act of August 31, 1852, or March 3, 1899, this office is not advised, but it is deemed better to follow in the matter of description of the warrants to be affected the identical language employed in the acts of 1852 and 1899. It is therefore suggested that if the bill is to be enacted into law it should be amended as follows:

In the title of said bill, for the words "Virginia military, continental, or State land warrants" substitute "unsatisfied outstanding military land warrants issued by the proper authorities of the Commonwealth of Virginia for service in the State and continental lines in the Army or Navy of the Revolution." After the word "to," in line 3, page 1, strike out "Virginia military, continental, or State land warrants" and insert—

unsatisfied outstanding military land warrants or parts of warrants issued or allowed prior to the first day of March, eighteen hundred and fifty-two, by the proper authorities of the Commonwealth of Virginia for military services performed by the officers and soldiers, seamen, or marines of the Virginia State and continental lines in the Army or Navy of the Revolution.

In line 5, page 1, after the word "file," insert "in the General Land Office." Strike out the word "or," being the first word in

line 7, page 1, and insert in lieu thereof the word "and." After the word "act," in line 12, page 1, insert "of March 3, 1899."

Beginning in line 1, of page 2, strike out the remainder of the bill after the word "passed," and substitute the following:

and the owners of such unsatisfied military warrants or parts of warrants issued or allowed by the State of Virginia for military services performed by the officers and soldiers, seamen, or marines of the Virginia State and Continental lines of the Army or Navy of the revolution, are hereby notified and required to present their applications, together with a relinquishment of the warrants in due form, to the Secretary of the Interior, for the issuance of scrip, under the provisions of the act entitled "An act making further provisions for the satisfaction of the Virginia land warrants," approved August thirty-first, eighteen hundred and fifty-two, within twelve months from the passage of this act, and all such applications and claims for the issuance of scrip under the provisions of said act not so presented shall be forever barred and invalid.

The reason for this proposed change is that the bill seems to accomplish the desired purpose and should be plainer and more consistent to make it end at the place indicated, with the limitation as to time above suggested. The wording of the bill on the first page indicates that it is intended to affect only such warrants as were on file in the General Land Office at the date of the passage of the act of March 3, 1899, the location of which on land in the military district of Ohio had failed, while the language at the top of page 2 of the bill applies the benefits of the act to "all outstanding military warrants or parts of such warrants issued or allowed by the State of Virginia," etc., thus possibly opening up questions in reference to all classes of unsatisfied warrants, the ultimate effect of which it would be hard to forecast. The last clause of the bill appears to be an attempted adjudication by statutory enactment of the ownership of these warrants and had better be omitted.

The bill as amended would read as follows:

A BILL To amend and construe an act entitled "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred, and for other purposes," in so far as the same relates to unsatisfied outstanding military land warrants issued by the proper authorities of the Commonwealth of Virginia for services in the State and continental lines in the Army or Navy of the Revolution.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the foregoing act, in so far as it relates to unsatisfied outstanding military land warrants or parts, or warrants issued or allowed prior to the first day of March, eighteen hundred and fifty-two, by the proper authorities of the Commonwealth of Virginia, for military services performed by the officers and soldiers, seamen, or marines of the Virginia State and continental lines in the Army or Navy of the Revolution, shall not be construed to relate to any warrants which were on file in the General Land Office, by originals or certified copies, at the date of the passage of said act, and on which locations were lost by failure to return surveys prior to January first, eighteen hundred and fifty-two, but that the settlement of the same shall be proceeded with under the act making further provision for the satisfaction of Virginia land warrants approved August thirty-first, eighteen hundred and fifty-two, precisely as though such original act of March third, eighteen hundred and ninety-nine, had never been passed; and the owners of such unsatisfied military warrants or parts of warrants, issued or allowed by the State of Virginia for military services performed by the officers and soldiers, seamen, or marines of the Virginia State and continental lines of the Army or Navy of the Revolution, are hereby notified and required to present their applications, together with a relinquishment of the warrants in due form, to the Secretary of the Interior, for the issuance of scrip under the provisions of the act entitled "An act making further provisions for the satisfaction of the

Virginia land warrants," approved August thirty-first, eighteen hundred and fifty-two, within twelve months from the passage of this act, and all such applications and claims for the issuance of scrip under the provisions of said act, not so presented, shall be forever barred and invalid.

It was the evident intention of Congress from the beginning to limit the time within which Virginia military bounty-land warrants might be satisfied. Beginning with the act of March 3, 1804 (2 Stat. L., 274), the provision was enacted that surveys made under such warrant locations should be returned within five years from the date of the passage of said act. The same policy of limitation is found in subsequent acts extending the time to January 1, 1852, within which surveys might be returned. Since the latter date all persons have been barred from making entries.

In lieu of such unsatisfied outstanding warrants the act of August 31, 1852, provided:

That all unsatisfied outstanding military land warrants or parts of warrants issued or allowed prior to the first day of March, eighteen hundred and fifty-two, by the proper authorities of the Commonwealth of Virginia, for military services performed by the officers and soldiers, seamen, or marines, of the Virginia State and continental lines in the Army or Navy of the Revolution, may be surrendered to the Secretary of the Interior, who, upon being satisfied, by a revision of the proofs or by additional testimony, that any warrant thus surrendered was fairly and justly issued in pursuance of the laws of said Commonwealth for military services so rendered, shall issue land scrip in favor of the present proprietors of any warrant thus surrendered, for the whole or any portion thereof yet unsatisfied.

On February 18, 1871 (16 Stat. L., 416), Congress granted all unsurveyed and unsold land in the military district of Ohio to the State of Ohio, and the State subsequently granted said land to the University of Ohio.

On March 3, 1899 (30 Stat. L., 1099), Congress, evidently considering that the owners of outstanding unsatisfied Virginia military land warrants had been allowed a sufficient time within which to present and surrender the warrants in order to have scrip issued thereon under the act of August 31, 1852, modified the said act as follows:.

* * * and the owners or holders of all outstanding military land warrants, or parts of such warrants, issued or allowed by the State of Virginia for military services performed by the officers and soldiers, seamen, or marines of the Virginia State Continental lines in the Army or Navy of the Revolution, are hereby notified and required to present and surrender them to the Secretary of the Interior within twelve months from the passage of this act for his action under the provisions of the act entitled "An act making further provisions for the satisfaction of the Virginia land warrants," approved August 31, 1852, and all such warrants, or parts of warrants, not so presented and surrendered to the Secretary of the Interior shall be forever barred and invalid.

The provisions of this act were extensively advertised by the Secretary of the Interior in several papers so as to give the widest publicity possible to the holders of such warrants of the provisions of said act. Under date of June 7, 1899, the said advertisement was inserted in the following papers: The Post and the Star, of Washington, D. C.; the Dispatch, of Richmond, Va.; the Sun and American Agriculturist, of New York City; the Enquirer and the Commercial Gazette, of Cincinnati, Ohio, and the Globe-Democrat, of St. Louis, Mo., said advertisements being as follows:

Virginia land warrants: Department of the Interior, Washington, D. C., June 7, 1899. The attention of all persons interested therein is hereby directed to the following extract from the act of Congress approved March 3, 1899,

to wit: The owners or holders of all outstanding military land warrants or parts of such warrants issued or allowed by the State of Virginia for military services performed by the officers and soldiers, seamen, or marines of the Virginia State and Continental lines in the Army or Navy of the Revolution are hereby notified and required to present and surrender them to the Secretary of the Interior within twelve months from the passage of this act for his action under the provisions of the act entitled "An act making further provisions for the satisfaction of the Virginia land warrants," approved August thirty-first, eighteen hundred and fifty-two; and all such warrants or parts of warrants not so presented and surrendered to the Secretary of the Interior shall be forever barred and invalid.

E. A. HITCHCOCK,
Secretary of the Interior.

In view of the fact that the owners or holders of such unsatisfied warrants were duly notified to present and surrender the same to obtain the benefits of the act of August 31, 1852, within twelve months from the passage of the act of March 3, 1899, and have failed to do so, this office is of the opinion that they are not entitled to relief at this date, having forfeited their right by not presenting the warrants within the time specified.

Congress has been unusually generous and lenient with the holders of these warrants by extending the period from time to time for over fifty years within which such warrants might be located and the surveys returned, and allowed about forty-seven years within which scrip might be issued in satisfaction of such warrants before the passage of the act of March 3, 1899, limiting the period to twelve months.

The passage of this act would provide for the issuance of many thousand acres of scrip. It would be very difficult at this time to estimate the number of acres affected, as the condition and whereabouts of a great many of these warrants is unknown to this office. It would open up a question which had been very properly closed by Congress.

The bill and referred papers are herewith returned.

Very respectfully,

W. A. RICHARDS, *Commissioner.*

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